THE RAILROAD SOLVENCY ACT OF 1983: RETIREMENT AND UNEMPLOYMENT INSURANCE ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

AND THE

SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION

OF THE

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CONTENTS

Page
Press release of Wednesday, April 20, 1983, announcing hearing 1

WITNESSES

General Accounting Office: Peter J. McGough, Associate Director, Human Resources Division; Andrew Kulanko, Group Director, Human Resources Division; and Patrick Dolan, Supervisor Evaluator, Chicago Regional Office. 5
Office of Management and Budget: Hon. David A. Stockman, Director, Steve Leiberman, and Fred Upton 273

Association of American Railroads, William H. Dempsey 66
Brotherhood Railway Carmen of the United States and Canada, O. W. Jacobson 187
International Brotherhood of Electrical Workers, Andrew M. Ripp 208
National Railway Labor Conference, Charles Hopkins 66
Railroad Retirement Association, Lloyd L. Duxbury 232
Railroad Yardmasters of America, A. T. Otto, Jr 198
Railway Labor Executives' Association, Ole M. Berge and William G. Mahoney 51

SUBMISSIONS FOR THE RECORD

Brooks, Chester L., North Canton, Ohio, letter 322
Chamber of Commerce of the United States of America, Hilton Davis, letter.... 323
Council of State Chambers of Commerce, William R. Brown, letter 324
National Association of Retired and Veteran Railway Employees, Inc., Patrick Mendillo, statement 325
Regional Transportation Authority, Chicago, Ill., Lewis W. Hill, letter 326

THE RAILROAD SOLVENCY ACT OF 1983: RETIREMENT AND UNEMPLOYMENT INSURANCE ISSUES

TUESDAY, MAY 3, 1983

House of Representatives, Subcommittee on Social Security, and Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means,

Washington, D.C.

The subcommittees met at 9 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. J. J. Pickle (chairman of the Subcommittee on Social Security) presiding.

[The press release announcing the hearing follows:]

[Press release of Wednesday, April 20, 1983]

Hon. J. J. Pickle (D-Texas), Chairman of the Subcommittee on Social Security, and Hon. Harold E. Ford, Chairman of the Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, Announce Joint Subcommittee Hearings on Certain Retirement and Unemployment Insurance Issues Raised by the Railroad Retirement Solvency Act of 1983

The Honorable J. J. Pickle (D-Texas), Chairman of the Subcommittee on Social Security, and the Honorable Harold E. Ford (D-Tennessee), Chairman of the Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, announce a joint hearing on certain retirement and unemployment insurance provisions in H.R. 1646, the Railroad Retirement Solvency Act of 1983, as reported by the Committee on Energy and Commerce which are within the jurisdiction of, or affect programs within, the Subcommittees' jurisdiction.

The hearing will be held on Tuesday, May 3, 1983, in the Committee's main hearing room, 1100 Longworth House Office Building, beginning at 9:00 a.m. (If necessary, hearings will continue on Wednesday, May 4, 1983.) Testimony will be received from the Administration, the General Accounting Office, representatives of rail management and labor, and other public witnesses.

BACKGROUND

Railroad workers are not covered either by the social security program (i.e., the old age and survivors, disability, and health insurance programs) or the Federal Unemployment Insurance program. Railroad workers are covered by the Railroad Retirement System which provides social security equivalent benefits and the equivalent of a private pension. (In addition, certain rail workers are eligible to receive a "windfall benefit" which is funded by general revenues.) There is a "financial interchange" between social security and railroad retirement which is designed so that the social security system is neither advantaged nor disadvantaged by the fact that rail workers are not covered by social security. Rail workers receive unemployment insurance (UI) benefits through the Railroad Unemployment Insurance Act which covers only rail workers.

A provision enacted in the 1981 Reconciliation bill provides that prior to the beginning of any fiscal year in which the Railroad Retirement Board determines that it will not be able to pay full benefits under the Railroad Retirement Act to all entitled beneficiaries for the full year, the Board must issue regulations which shall provide for reducing benefits to the extent necessary so that payments would not exceed the finds available. Because of insufficient funds, the Board has determined that full retirement benefits cannot be paid throughout Fiscal Year 1984.

In addition, current railroad UI benefits exceed UI revenues. However, the UI program is authorized to borrow from the retirement program. It is estimated that the outstanding UI debt to the retirement account will be $650 million by October 1, 1984.

Legislation has been introduced both in the House and Senate which would eliminate the necessity of reducing railroad retirement benefits beginning October 1, 1983, both by increasing revenues and decreasing outgo. H.R. 1646, which embodies an agreement reached by rail labor and management on February 17, 1983, and which has been reported favorably by the Committee on Energy and Commerce, is pending before the Committee on Ways and Means. The Administration outlined its proposals on this issue in testimony before the Commerce Committee.

FRAMEWORK FOR HEARINGS

In addition to general testimony concerning provisions of H.R. 1646 and the Administration proposal which are within the jurisdiction of the Committee on Ways and Means, the Subcommittees are particularly interested in receiving testimony on the following:

(1) The provisions contained in section 302 of H.R. 1646 that allow the Railroad Retirement Board, under the loan authority contained in section 1201 of the Social Security Act, to borrow Federal general revenues to pay rail unemployment insurance benefits. This is the authority under which States may receive Federal unemployment loans. However, under this provision the railroad industry would be specifically exempted from the related repayment provisions of this section that apply to borrowing States.

(2) The Administration proposal to integrate the current rail unemployment insurance program with the Federal/State unemployment compensation system. Under this proposal, after a necessary transition period, rail workers would be covered under State unemployment compensation programs rather than the separate rail unemployment program.

(3) The Administration proposal to conform the Tier One and Tier Two wage bases so that each equals an annual amount identical to the social security wage base.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

In addition to testimony received from invited witnesses, individuals and organizations interested in presenting oral testimony at the hearing should submit their requests to be heard, by telephone to Harriett Lawler (202) 225-3627) no later than the close of business, Wednesday, April 27, 1983, to be followed by a formal written request to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Subcommittee to hear as many points of view as possible. Time for oral presentations will be limited with the understanding that a more detailed statement may be included in the printed record of the hearing. This procedure will afford more time for Members to question witnesses. In order to expedite the hearing, witnesses may be grouped as panelists with time limitations for each panelist.

Requests to be heard must contain the following information:

(1) The name, address, title, firm affiliation and/or organization the witness will represent (as well as a telephone number where he or his designated representative may be reached);

(2) If appearing in an individual capacity, a list of any clients at whose request or in whose employ the witness appears; and

(3) A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the written record of the hearing.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittees are required to submit 50 copies of their prepared statement to the full Committee office, Room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

For those who wish to file a written statement for the printed record of the hearing, five copies are required and may be submitted to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102, Longworth House Office Building, Washington, D.C. 20515, by close of business, on Friday, May 27, 1983. An additional supply of statements for the printed record may be furnished for distribution to the press and public if supplied to the Committee office before the hearing.

Chairman **Pickle**. The Chair will ask all witnesses to take their seats.

Mr. Harold Ford has been unavoidably detained in his district. He asked that I express his concern about the provisions in H.R. 1646 that would allow the railroad unemployment system to borrow from the Federal unemployment account. This borrowing would be allowed under the provisions without repayment. His subcommittee will be looking at the concurrent railroad unemployment compensation system and proposals for long-term solvency of that fund.

Mr. Ford will be here for the afternoon session.

This hearing is unusual. The method of legislating in the area of railroad retirement is without parallel in the rest of the legislative process. Congress has in the past more or less ratified without substantive changes the results of negotiation between labor and management. The process has worked fairly well in the past. Congress has been relatively uninterested so long as the parties have agreed to finance between themselves the benefits which they have agreed to pay. However, this laissez-faire attitude may not apply to any agreement which reaches out and taps the Federal Treasury to the extent that the present agreement does, an amount well in excess of $3 billion by 1989.

Today we have before us only the labor-management agreement, that is H.R. 1646. However, I do not mean to restrict the deliberations of our subcommittees to only that bill. The subcommittee will entertain and evaluate the proposals of all other interested parties including the administration. This will be done with the goal of enacting fair and sound legislation that would treat all parties, including the Federal taxpayer, equitably.

I anticipate that this subcommittee and the full committee will act in a bipartisan manner as we did during the social security bill. The subcommittee is prepared to work with all parties in hopes of enacting such legislation. However, I must point out that the Congress alone has the obligation to enact legislation. This committee will take that obligation seriously.

We have several witnesses.

Mr. Gradison.

Mr. **Gradison**. Mr. Chairman, I would like to join in the statement which you have made and underline the importance of the review process which we are undertaking. Fortunately as I understand it, we have until October 1 to come up with some answers. We are not under the immediate gun, and I certainly would be hopeful that we would use this as a chance to reexamine the entire structure of these programs. I am not clear in my own mind that it makes sense any more other than because of the history of these programs for them to be treated in a different way than other programs for industrial workers in America or for others that are covered by unemployment compensation. So it seems to me that one of the questions that we ought to be examining is whether there is an appropriate measure gradually phased in over an appropriate period of time with proper protections for putting these programs on the same track as we now have for people in other jobs.

Mr. Chairman, I think this is particularly underlined as we move into a world where the regulatory situation is changing and where railroads are competing without the protections as well as the curses of regulation in a different way than they have in the past.

I find it difficult to understand the logic, indeed I cannot find any, for the general fund, which is supported by all the taxpayers, assisting in paying pension benefits for one particular group of employees, in this case railroad workers or former railroad workers. Whereas people in directly competing occupations, for example truckdrivers, are expected to come up with the moneys through other means. I think if we are going to provide some kind of a level playing field for competition in the transportation industry, an appropriate part of it is to make sure that the financing of compensation including such important benefits as unemployment compensation and pensions should be done on a relatively similar basis. At least the Federal Government should be neutral as among the competitors in this process.

Therefore, Mr. Chairman, I hope that the witnesses will consider this question with us, and more specifically that if additional funds are necessary over and above what it is possible to obtain from employer contributions whether we might be helpful by permitting the railroad industry to put into place perhaps some kind of an across-the-board excise tax on freight movements which might come up with those additional funds rather than looking to the Treasury to do so. It seems to me that would be fairer in terms of intermodal competition than what we have today with the Federal Government, in effect, bankrolling one competitor for very important costs whereas other competitors are expected to finance these benefits on their own.

Thank you, Mr. Chairman.

Chairman PICKLE. Mr. Moore.

Mr. MOORE. Mr. Chairman, I too would like to associate myself with the remarks of both the distinguished chairman and my colleague from Ohio. I do not understand the exemption for railroads' unemployment compensation. I would like to see the witnesses address that. It is one thing if they can pay for it, but if they have a system that is bankrupt I do not know why it is we should continue a bankrupt system and why we should not go ahead and make them like everybody else under the State systems.

Second, in looking at the proposal that has come out of the Commerce Committee, I am unimpressed with it at this point and I am going to have to be convinced by the witnesses to support it. If you look at what happened in social security under the bill of the distinguished chairman, this subcommittee got passed by the Congress a bill that I supported: 23 percent of the amount of money came out of the Federal Government, 77 percent by those people in the private sector who are going to be benefiting from it. This bill, H.R. 1646, puts 44 percent of the burden on industry and 56 percent on the Government. And I think the gentleman from Ohio just pointed that out. We are not creating a level playing field for all forms of transportation when we have the private sector and other forms of transportation paying 77 percent of social security benefits for their retirees, we have the railroad industry paying only 44 percent. So I think we have to change this bill.

It is an important hearing. I am certainly going to listen, but at this point I have two problems: Why a separate unemployment compensation system which is bankrupt, and why this much money coming out of the Treasury for the constant shoring up of this system.

And I said it before, we had oversight hearings a couple of years ago on the Oversight Subcommittee. I think that you are quite correct in your statement, Mr. Chairman. In the past the Congress has been all too anxious to let the unions and management work out the situation and nobody has looked out for the taxpayers. As far as I am concered if railroad management and unions get together, the taxpayers better look out. And I think the bill we have got in front of us is a good example of that.

Chairman PICKLE. I thank you and Mr. Gradison for the comments. You have some well-stated points. I think all the members recognize that the first purpose of these hearings is to get as much information as we can from various witnesses, starting off with GAO, and try to establish as facts some of the points that you have just made. We are in a rather unusual position in that the Commerce Committee is the committee of jurisdiction which advances the various plans for this system and has for years. This committee has jurisdiction only in the respect of that which affects the tax involved or as it affects the unemployment compensation program. We have a question of some jurisdiction as we go along with these hearings. Rather than try to stake out our position on our philosophy and our feelings, which I am sure most of us could share in general, I think it might be well if we go ahead and proceed if the members would like to get the testimony before us. If that is satisfactory, we are going to proceed.

The first witness will be Mr. Peter J. McGough, who is the Associate Director, Human Resources Division of the GAO [General Accounting Office].

Would you identify the two gentlemen with you.

STATEMENT OF PETER J. McGOUGH, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ANDREW KULANKO, GROUP DIRECTOR, HUMAN RESOURCES DIVISION, AND PATRICK DOLAN, SUPERVISOR EVALUATOR, CHICAGO REGIONAL OFFICE

Mr. McGOUGH. Mr. Andrew Kulanko on my left is Group Director for retirement programs at the Social Security Administration and Railroad Retirement Board. Mr. Kulanko is from GAO's headquarters here in Washington. On my right is Patrick Dolan, who is the supervisor evaluator from our Chicago regional office and our resident expert for railroad retirement programs which is also headquartered in Chicago.

Chairman PICKLE. Mr. McGough, you may proceed. I see you have a rather ambitious statement here.

Mr. McGOUGH. I will try to go through most of the text of my statement. As you will note after page 19 there are synopses of the various GAO reports that we will be referring to during my testimony.

Chairman PICKLE. Well, you proceed then, and if you revise and extend it in part will you try to identify what page and where you are so we can follow your testimony.

Mr. McGOUGH. Fine.

In discussing the issues addressed by the proposals to improve the financial condition of the railroad retirement and unemployment programs, we will be drawing on experience gained through a number of GAO reviews of the Railroad Retirement Board's programs and operations over the past several years.

As you know, this is the third financial crisis for the railroad retirement system in 10 years. The Railroad Retirement Act of 1974 and the 1981 amendments to that act, as contained in the Omnibus Budget Reconciliation Act of 1981, did not solve the retirement program's financial problems for three principal reasons. Annual cost-of-living increases exceeded increases in taxable wages. Windfall payments greatly exceeded estimated amounts. Railroad employment projections were substantially overly optimistic.

We hope to assist your subcommittees by discussing how the system operates and is tied to social security, by restating proposals from our past work which we believe could help improve the railroad retirement program's financial condition, and by commenting on selected aspects of the proposals contained in H.R. 1646 and S. 1076.

The Railroad Retirement Board administers a retirement program which includes four major components. The first—tier I—involves benefits similar to those available under social security. The second—tier II—is essentially a private industry pension plan. The third, a windfall, is an added benefit available to those who, prior to 1975, had qualified for benefits under the railroad retirement and social security systems. The last component is a supplemental annuity paid to employees with many years of service.

Railroad employer and employee payroll taxes, transfers from social security, and general revenues fund the railroad retirement program. The tax rate for the social security component is the same as the social security tax for both emloyers and employees. The tax rate for the industry pension component currently is 11.75 percent of the taxable wage base for employers and 2 percent for employees. Windfall is funded through appropriated general revenues. The supplemental benefit is funded by an employer tax of 18.5 cents per labor hour.

From the program's inception in 1935 until 1951, railroad employer and employee payroll taxes funded this program with no Federal assistance. Since 1958, social security has, through a financial interchange, transferred about $20 billion to the Board. From 1976, the Federal Government has provided general revenue appropriations for the windfall component of about $2 billion. In 1981, social security transfers and windfall appropriations from general revenues represented about 41 percent of the railroad retirement program's annual income. Of course, the social security funds transferred are net amounts which do not include payroll taxes collected by the Board which are also used to finance the social security component.

Under current law, the railroad retirement program will pay about $5.7 billion in benefits in 1983. The Board, however, estimates that in the near future the retirement account will be unable to pay full benefits. Consequently, as required by the 1981 amendments, the Board has reported to the President and Congress that the industry pension component of retirement benefits must be reduced by 40 percent beginning in October 1983 unless an alternative solution is reached. This report led to the proposals in H.R. 1646 and S. 1076.

The Board also administers the railroad unemployment and sickness insurance program. Because railroad workers have their own system, they are not covered under the Federal unemployment insurance program. Railroad employment and sickness benefits are financed by a tax on employers and, when the employer tax revenues are inadequate to pay full benefits, by borrowing from the retirement account.

The Unemployment Insurance Trust Fund, like the Railroad Retirement Account, is experiencing serious financial difficulty. Benefit costs rose from about $180 million in 1977 to about $345 million in 1982. As of March 1983, the program owes the retirement account about $478 million. The borrowing is expected to total about $650 million by October 1983 and is occurring while the retirement account is approaching a deficit situation. Recent Board projections indicate that by 1988 the unemployment program will need to borrow an additional $1 billion.

GAO has issued a number of reports which address some of the issues in the current legislative proposals or which deal with matters relevant to the retirement program's financial situation. The subjects of these reports include speeding the transfer of funds under the financial interchange; establishing financially independent trust funds; decreasing windfall appropriations; changing the retirement tax wage base from a monthly to an annual basis; accelerating retirement tax deposits; and eliminating postsecondary student benefits.

And, in the near future, we will report on improvements needed in the Board's disability program. GAO's reports and recommendations, however, do not address the full range of actions needed to solve the financial problems facing the railroad retirement and unemployment insurance programs. In that regard, our input today does not include all of the proposals which the Congress is being asked to consider. In addition to discussing the relevant information from our reports—which we shall do now—we are attaching a brief synopsis of the reports.

I will turn now to the financial interchange. In establishing the railroad retirement program in 1935, the Congress exempted the rail industry from the Social Security Act. During the 1940's, the railroad retirement program provided benefits much higher than those available under social security and funded them entirely from employer and employee contributions. Social security benefit increases in 1950 narrowed the margin between the two programs. Around this time, the rail industry proposed changing the program's financing to support increased retirement benefits. This proposal led to the concept of a financial interchange between social security and the Board.

In 1951, the Congress amended the Railroad Retirement Act to provide for an annual transfer of funds between social security and the Board—the financial interchange. The interchange places social security in the same financial position it would have been in had railroad employment always been covered by social security. The Board determines the amount that would have been paid to railroad beneficiaries if they had been covered by social security. These benefits are offset by taxes social security would have collected from current railroad employers and employees had they been covered under social security. In the first interchange, made in 1952 and covering 1937-51, the Board owed social security. This amount was credited toward what social security would pay in the future; the amount was exhausted by 1957.

Since the interchange began, the high rate of railroad beneficiaries to railroad employees, currently about 3 to 1, has led to social security transferring about $20 billion to the Board since 1957. Over the last 10 years social security, through the interchange, annually provided the Board with an average of 34 percent of its total revenue.

Although the interchange comprises a significant portion of the Board's total funding, social security does not transfer these funds to the Board until 9 months after the close of the year in which the benefits were paid. This has caused a cash flow problem for the Board. Because of its own financial problems, social security has resisted attempts to speed up the transfer.

To remedy this situation, the Congress in the 1981 amendments authorized the Board to borrow from the Treasury's general revenues using the interchange as collateral—the borrowed funds to be repaid as soon as the interchange was completed. This borrowing is limited to the monthly shortfall between tax revenues and benefit payments. Both H.R. 1646 and S. 1076 would expand this borrowing further by allowing the Board to borrow an amount equal to what would be transferred to the Board if the interchange were on a current monthly basis. In addition, S. 1076 would gradually accelerate the payment of interchange amounts through 1991, when the transfer would finally be on a current basis.

GAO has supported putting the financial interchange on a current basis. Recognizing the potential adverse impact on the social security trust fund, we have not made a specific recommendation. However, social security's financial position should improve when the 1983 social security amendments take effect. Also, transferring the interchange amounts on a current basis should help improve the financial solvency of the retirement account and would eliminate the need for the use of general revenues. Thus, we believe Congress should consider the merits of a more current interchange transfer.

Taxes collected for the social security component of the railroad retirement benefit and funds transferred by social security through the financial interchange are commingled in the retirement account with taxes collected for the industry pension component of the benefit. In March 1981 we recommended that since the interchange provides funds for the social security component, there should be a separate account for these funds because commingling all funds in one account does not provide the desired accounting control and integrity of each funding source. Such separate accounts would be financially independent trust funds.

Because of the delayed transfer of funds from social security to the Board, taxes for the industry pension component or funds borrowed from general revenues are used to finance the social security component until the financial interchange transfer is made. This use of commingled funds for different program purposes further supports our recommendation for a separate account. Even if separate accounts are established, interaccount borrowing might still be required unless the financial interchange is put on a current basis. Separate accounts would enhance the accountability and control over interfund borrowing.

I might note here that of the four benefit components, the windfall and supplemental already are funded through separate accounts, the windfall account having been established by Congress in the 1981 amendments. Consequently, separating the social security and industry pension components into separate accounts would be the final step toward assuring clear accountability.

Although our recommendation to establish separate accounts has not been fully adopted, part of our concern was addressed by the Congess when it enacted section 22 of the Railroad Retirement Act in the 1981 amendments, which requires reporting to the President and the Congress when there is a pending financial crisis and full benefits may not be payable. Subsection (c) provides that if benefits must be reduced, the industry pension component must be cut first. In accordance with this provision, the current financial crisis requires—barring congressional resolution—a 40-percent reduction in the industry pension component beginning in October 1983 to protect the social security component. H.R. 1646 would repeal section 22(c) of the Railroad Retirement Act.

As mentioned earlier, past efforts to insure the financial solvency of the railroad retirement program have not solved the Board's problems. Because there are no guarantees the current efforts will be successful, we believe Congress should consider establishing separate accounts for the social security and industry components to provide greater assurance that social security equivalent benefits are protected. If not, section 22(c) should be retained.

Now, I would like to talk about windfall obligation. Before 1975, it was possible for a railroad employee with periods of nonrailroad-related employment to qualify for both railroad retirement and social security benefits. These persons—and their spouses and survivors—were known as dual beneficiaries.

Because the benefit formulas under the social security and railroad retirement programs are weighted in favor of persons with low lifetime earnings, dual beneficiaries receive more in combined railroad retirement and social security benefits than they would have had all their earnings been earned and their benefits calculated under one program. The difference between what dual beneficiaries receive in combined benefits calculated separately under each program and what they would receive if all of their earnings were computed under one program is termed a "windfall."

Historically, the cost of this windfall has been assumed by the Board's railroad retirement account. To rectify the financial problems the account was experiencing, the Railroad Retirement Act of 1974 made two major changes affecting windfall. One, while "grandfathering" in employees and retirees already eligible for windfall, eliminated these benefits for new beneficiaries. The other provided for funding windfall through the appropriation of general revenues.

In 1976 the Board estimated that annual windfall appropriations of $250 million would be needed for 25 years. These estimates have continually escalated—reaching $440 million for 1982. Except for 1976, actual general revenue appropriations for windfall have been less than the Board estimated and paid.

Although general revenue appropriations were not adequate to fully fund the total amount of windfall to which beneficiaries were entitled, the Board continued to pay full windfall benefits from retirement account reserves. Thus, the account continued to absorb a portion of the windfall cost and by fiscal 1981, the account's reserves had been reduced by $1 billion. In 1981, a separate dual benefits payments account was established and windfall profits have since been limited to the amount appropriated.

This shortfall between appropriated general revenues and the actual windfall payment, and the related $600 million in interest that could have been earned, has become a point of controversy. Based on our work, we have taken the following positions and offer the following observations.

In 1981, we recommended that the Congress reevaluate to what extent the Treasury should continue to fund windfall costs through general revenues. Under the Board's retirement program, retirees and dependents who receive windfall benefits, in most cases, have their private pensions reduced. These reductions result in a reduced financial obligation on the retirement account. If the annual Federal appropriation for windfall was predicated on only the amount the Board pays as a result of windfall benefits—windfall cost less the private pension offset—the Board's estimate of the total amount of windfall appropriations needed from fiscal year 1981 to 2000 would be reduced by about $2 billion. Also, present Board estimates of the Federal Government's obligations for past windfall shortfalls are gross estimates that do not take into consideration the reductions in the private industry component which reduce the financial obligation of the retirement account.

We believe this is pertinent because H.R. 1646 calls for providing about $2 billion in general revenues to repay the gross rather than net amounts used, from 1975 through 1981, from the account to pay windfall benefits and lost interest.

In July 1982 we issued a report to the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education on the impact reductions in windfall appropriation levels could have on beneficiaries. We pointed out that the overwhelming portion of windfall benefits goes to family units in the upper benefit ranges. Our analyses of beneficiaries' dependence on the full $440 million windfall entitlement for 1982 showed that more than 95 percent of the families would have total benefits above the average social security benefit and almost 80 percent of the families would have total benefits above the average railroad retirement pension.

We also pointed out that, except for totally eliminating windfall funding, reductions in appropriations did not appear to result in substantial additional numbers of families falling below selected benefit cutoff points. For example, at full entitlement—$440 million—about 21 percent of all windfall families were below the average railroad retirement pension. If the appropriation had been reduced to $350 million, about 24 percent of the families would have been below this benefit level.

In a March 1981 report, we recommended that wage taxes for the social security component be based on annual rather than monthly maximum earnings. S. 1076 contains a similar proposal. If adopted, it would result in more revenues for the Board's retirement account.

Under the current railroad retirement taxing provisions, the Board transfers to social security, through the financial interchange, more in taxes than it collects. This happens because social security taxes are collected on an annual wage base, but railroad contributions for the social security component are calculated on a monthly maximum wage base equal to one-twelfth of the annual social security wage base. If a railroad employee works continually for a full year, and has earnings at least equal to the monthly maximum wage base, the tax collections would be equal under either program. If, however, a railroad employee works intermittently and earns more in one month and less in another, the monthly maximum wage base provision could result in less taxes for the Board than would be payable under social security.

Also, since retirement benefits are based on taxable earnings, the railroad retirement social security component benefit would be somewhat higher with the higher taxable base. This would offset some of the increased revenues but not entirely.

The condition of the retirement account would be improved if the recommendations in our September 1981 report on the timeliness of employer tax deposits were adopted. Present Treasury regulations allow railroad employers to make less frequent deposits of retirement contributions than other employers. In fiscal 1980, the railroad retirement program could have earned almost $19 million in additional interest had Treasury required deposit of taxes more frequently. We recognized in our report that railroad employers could incur some additional administrative costs in switching to more frequent deposits.

The Board is in favor of speeding up tax collections and has been negotiating with Treasury. To date, Treasury has not acted on our recommendations.

In 1979, GAO recommended that social security benefits for postsecondary students be discontinued. The Omnibus Budget Reconciliation Act of 1981 amended the Social Security Act to gradually phase out this benefit. The act also affected postsecondary student benefits paid under the Railroad Retirement Act.

It is still possible, however, for new beneficiaries to obtain a postsecondary student benefit under the industry pension component.

The proposals before the Congress call for elimination of such benefits. We are in agreement with these proposals for the same reason we favored eliminating such benefits under social security.

I would next like to focus on the railroad unemployment and sickness insurance program.

In 1938 the Railroad Unemployment Insurance Act established a separate unemployment program for railroad workers, to be administered by the Board. A separate program for the railroads was justified as a solution to problems arising from differences in State unemployment programs. Employees doing the same job in different States would collect different benefits, and traveling employees might be unable to collect in some States.

Unions favored the program because it offered broader coverage and more security than the State systems. Railroad management generally opposed the act, fearing that broader benefits ultimately would cost more in taxes.

In 1946, the act was amended to add sickness benefits, payable on essentially the same basis as unemployment benefits, to employees out of work due to illness or injury, regardless of whether the condition was work related.

The unemployment and sickness insurance program is funded on a trust fund basis through a payroll tax on railroad employers. The tax can range from 0.5 percent to 8 percent of taxable wages depending on the trust fund balance. The tax rate, currently 8 percent, applies equally to all employers. When tax collections are insufficient to pay benefits, the program can borrow from the retirement account to be repaid when the trust fund has.more cash than needed to pay benefits.

Since first authorized to borrow in 1959, the program has borrowed frequently from the retirement account. Before 1982, the loans were repaid. Beginning in 1982, however, a surge in unemployment claims required a significant increase in borrowing from the retirement account with little potential for repayment. As of March 1983 the program owed the retirement account $478 million. The Board estimates that by 1988 the unemployment and sickness insurance trust fund will owe the retirement account more than $1.8 billion.

During earlier hearings on the two bills proposed to assure the solvency of the Board's railroad retirement and unemployment and sickness insurance programs, witnesses have testified that railroad employees would be better off under State administered unemployment programs—because States pay higher benefits.

While the maximum weekly benefit payable in many States is higher than the maximum weekly available under the Board's program, nonrailroad workers are not necessarily collecting the maximum benefits. Also, there are advantages available to the unemployed railroad worker. States have waiting periods and other restrictions on collecting benefits and will reduce or eliminate benefits whenever the beneficiary has other earnings. There is no waiting period for unemployment benefits under the Board's program. Benefits are payable for as little as 1 day of unemployment regardless of other earnings during that week, and benefits are payable to striking and suspended employees and discharged employees appealing dismissal.

In addition, nonrailroad workers may be required to seek employment outside of their industries. Railroad workers need only be actively seeking employment in the rail industry, and, in fact, may be discouraged from seeking employment outside the industry for extended periods because of the "current connection" provision of the Railroad Retirement Act. Maintaining a current connection with the rail industry is important for determining certain retirement benefits.

The Congress is faced with a difficult decision concerning the future financing of the railroad unemployment and sickness program. The two bills before you propose very different courses of action and we have not done enough prior work or analysis to suggest a course of action.

I would now like to turn to the subject of taxes. I discussed earlier our prior recommendations to change the monthly maximum taxable wage base for the social security component to an annual maximum and to require more timely tax deposits by railroads. I would now like to address the industry pension component taxable wage base and the taxing of benefits.

The taxable wage base for the industry pension component is lower than that for the social security component. The Office of Management and Budget estimates that for 1984 the lower wage base will cause a revenue loss of about $200 million. Also, the tax rate increases for the industry pension component would go into effect on July 1, 1984, under the proposals in H.R. 1646, and on July 1, 1983, under the proposals in S. 1076, while tax increases for the social security component will go into effect on January 1, 1984.

The Congress may wish to consider bringing the railroad retirement program more in line with the social security program by increasing their tax rates at the same time and by making the wage base and the tax deposit requirements the same under each.

The Social Security Amendments of 1983 require that a portion of social security benefits be taxed and the revenues from this tax be returned to the trust fund from which the benefits were paid. The amendments specifically include the railroad retirement social security component benefit in the definition of social security benefits, and accordingly revenues from taxing such benefits are to be forwarded to the railroad retirement account.

Neither H.R. 1646, S. 1076, nor the social security amendments are clear on how the revenues from taxing the social security component should be treated in the financial interchange. The House Energy and Commerce Committee's report on H.R. 1646 stated that none of the revenues would be subject to the financial interchange.

Excluding the revenues from the tax on the social security component from the financial interchange may not be in conformance with the intent of the Railroad Retirement Act. Such exclusions would cause social security to lose revenues it would have received if rail workers were covered under social security and provide revenues to the railroad retirement account beyond those needed to defray the cost of providing the social security component to railroad beneficiaries. Moreover, the additional revenues would be available to pay the industry pension component of the benefit.

Both H.R. 1646 and S. 1076 would tax the industry pension benefit component and return the revenues from such taxes to the retirement account. Both bills look upon the tax on the industry pension as a retiree contribution to solving the railroad retirement financial problems. The revenue from this tax is estimated to be about $600 million over the next 5 years. We note that the railroad industry pension would be taxed as income as private and Federal pension benefits are but that these taxes would not go into general revenue. In other words, you have a private pension that is taxed and money would go back to the private pension part.

H.R. 1646 and S. 1076 would also tax the windfall benefit, H.R. 1646 returning the revenues to the retirement account and S. 1076 returning the revenues to the Treasury. H.R. 1646 would return such revenues to the retirement account even though the benefit is to be paid from general revenue appropriations.

Another matter involves the sickness benefit paid by the Board. In 1982, the Board paid about $56 million in sickness benefits to about 74,000 beneficiaries. These benefits, however, are not taxed as income as are similar benefits under other public and private programs.

I call these four matters to your attention because the Congress might want to: One, clarify whether the tax revenues on the social security component should be covered under the financial interchange—we think it should; two, adopt the option of returning revenues from proposed windfall taxes to the Treasury since such benefits are paid from general revenues; three, consider whether returning to the retirement account revenues from taxing the industry pension benefit, as is being proposed, is an appropriate subsidy; and four, consider whether sickness benefits should be viewed consistently with similar benefits from other programs.

Mr. Chairman, that concludes my statement and we would be happy to answer any questions.

Mr. Chairman, I would ask Mr. Kulanko and Mr. Dolan to respond to your questions as well.

[The prepared statement with attachments follow:]

STATEMENT OF PETER J. McGOUGH, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE

Messrs. Chairmen and Members of the Subcommittees:

We are pleased to be here. In discussing issues addressed by the proposals to improve the financial condition of the railroad retirement and unemployment programs, we will be drawing on experience gained through a number of GAO reviews of the Railroad Retirement Board's programs and operations over the past several years.

This is the third financial crisis for the railroad retirement system in 10 years. The Railroad Retirement Act of 1974 and the 1981 amendments to that act, as contained in the Omnibus Budget Reconciliation Act of 1981, did not solve the retirement program's financial problems for three principal reasons. Annual cost-of-living increases exceeded increases in taxable wages. Windfall payments greatly exceeded estimated amounts. Railroad employment projections were substantially overly optimistic.

We hope to assist your Subcommittees by discussing how the system operates and is tied to social security, by restating proposals from our past work which we believe could help improve the railroad retirement program's financial condition, and by commenting on selected aspects of the proposals contained in H.R. 1646 and S. 1076.

BACKGROUND

The Railroad Retirement Board administers a retirement program which includes four major components. The first (Tier I) involves benefits similar to those available under social security. The second (Tier II) is essentially a private industry pension plan. The third, a windfall, is an added benefit available to those who, prior to 1975, had qualified for benefits under the railroad retirement and social security systems. The last component is a supplemental annuity paid to employees with many years of service.

Railroad employer and employee payroll taxes, transfers from Social Security, and general revenues fund the railroad retirement program. The tax rate for the social security component is the same as the social security tax for both employers and employees. The tax rate for the industry pension component currently is 11.75 percent of the taxable wage base for employers and 2 percent for employees. Windfall is funded through appropriated general revenues. The supplemental benefit is funded by an employer tax of 18.5 cents per labor hour.

From the program's inception in 1935 until 1951, railroad employer and employee payroll taxes funded this program with no Federal assistance. Since 1958, Social Security has, through a financial interchange, transferred about $20 billion to the Board. From 1976, the Federal government has provided general revenue appropriations for the windfall component of about $2 billion. In 1981, Social Security transfers and windfall appropriations from general revenues represented about 41 percent of the railroad retirement program's annual income. Of course, the Social Security funds transferred are net amounts which do not include payroll taxes collected by the Board which are also used to finance the social security component.

Under current law, the railroad retirement program will pay about $5.7 billion in benefits in 1983. The Board, however, estimates that in the near future the retirement account will be unable to pay full benefits. Consequently, as required by the 1981 amendments, the Board has reported to the President and Congress that the industry pension component of retirement benefits must be reduced by 40 percent beginning in October 1983 unless an alternative solution is reached. This report led to the proposals in H.R. 1646 and S. 1076.

The Board also administers the railroad unemployment and sickness insurance program. Because railroad workers have their own system, they are not covered under the Federal unemployment insurance program. Railroad employment and sickness benefits are financed by a tax on employers and, when the employer tax revenues are inadequate to pay full benefits, by borrowing from the retirement account.

The Unemployment Insurance Trust Fund, like the Railroad Retirement Account, is experiencing serious financial difficulty. Benefit costs rose from about $180 million in 1977 to about $345 million in 1982. As of March 1983, the program owes the retirement account about $478 million. The borrowing is expected to total about $650 million by October 1983 and is occurring while the retirement account is approaching a deficit situation. Recent Board projections indicate that by 1988 the unemployment program will need to borrow an additional $1 billion.

PRIOR GAO RECOMMENDATIONS AND POSITIONS

GAO has issued a number of reports which address some of the issues in the current legislative proposals or which deal with matters relevant to the retirement program's financial situation. The subjects of these reports include

- --speeding the transfer of funds under the financial interchange,
- --establishing financially independent trust funds,
- --decreasing windfall appropriations,
- --changing the retirement tax wage base from a monthly to an annual basis,
- --accelerating retirement tax deposits, and
- --eliminating postsecondary student benefits.

And, in the near future, we will report on improvements needed in the Board's disability program. GAO's reports and recommendations, however, do not address the full range of actions needed to solve the financial problems facing the railroad retirement and unemployment insurance programs. In that regard, our input today does not include all of the proposals which the Congress is being asked to consider. In addition to discussing the relevant information from our reports--which we shall do now--we are attaching a brief synopsis of the reports.

FINANCIAL INTERCHANGE

In establishing the railroad retirement program in 1935, the Congress exempted the rail industry from the Social Security Act. During the 1940s, the railroad retirement program provided benefits much higher than those available under social security and funded them entirely from employer and employee contributions. Social security benefit increases in 1950 narrowed the margin between the two programs. Around this time, the rail industry proposed changing the program's financing to support increased retirement benefits. This proposal led to the concept of a financial interchange between Social Security and the Board.

In 1951, the Congress amended the Railroad Retirement Act to provide for an annual transfer of funds between Social Security and the Board--the financial interchange. The interchange places Social Security in the same financial position it would have been in had railroad employment always been covered by social security. The Board determines the amount that would have been paid to railroad beneficiaries if they had been covered by social security. These benefits are offset by taxes Social Security would have collected from current railroad employers and employees had they been covered under social security. In the first interchange, made in 1952 and covering 1937-51, the Board owed Social Security. This amount was credited toward what Social Security would pay in the future; the amount was exhausted by 1957.

Since the interchange began, the high rate of railroad beneficiaries to railroad employees, currently about 3 to 1, has led to Social Security transferring about $20 billion to the Board since 1957. Over the last 10 years Social Security, through the interchange, annually provided the Board with an average of 34 percent of its total revenue.

Timing of the financial interchange

Although the interchange comprises a significant portion of the Board's total funding, Social Security does not transfer these funds to the Board until 9 months after the close of the year in which the benefits were paid. This has caused a cash flow problem for the Board. Because of its own financial problems, Social Security has resisted attempts to speed up the transfer.

To remedy this situation, the Congress in the 1981 amendments authorized the Board to borrow from the Treasury's general revenues using the interchange as collateral--the borrowed funds to be repaid as soon as the interchange was completed. This borrowing is limited to the monthly shortfall between tax revenues and benefit payments. Both H.R. 1646 and S. 1076 would expand this borrowing further by allowing the Board to borrow an amount equal to what would be transferred to the Board if the interchange were on a current monthly basis. In addition, S. 1076 would gradually accelerate the payment of interchange amounts through 1991, when the transfer would finally be on a current basis.

GAO has supported putting the financial interchange on a current basis. Recognizing the potential adverse impact on the social security trust fund, we have not made a specific recommendation. However, Social Security's financial position should improve when the 1983 Social Security Amendments take effect. Also, transferring the interchange amounts on a current basis should help improve the financial solvency of the retirement account and would eliminate the need for the use of general revenues. Thus, we believe Congress should consider the merits of a more current interchange transfer.

SEPARATE ACCOUNTS FOR VARIOUS RETIREMENT BENEFIT COMPONENTS

Taxes collected for the social security component of the railroad retirement benefit and funds transferred by Social Security through the financial interchange are commingled in the retirement account with taxes collected for the industry pension component of the benefit. In March 1981, we recommended that since the interchange provides funds for the social security component, there should be a separate account for these funds because commingling all funds in one account does not provide the desired accounting control and integrity of each funding source. Such separate accounts would be financially independent trust funds.

Because of the delayed transfer of funds from Social Security to the Board, taxes for the industry pension component or funds borrowed from general revenues are used to finance the social security component until the financial interchange transfer is made. This use of commingled funds for different program purposes further supports our recommendation for a separate account. Even if separate accounts are established, interaccount borrowing might still be required unless the financial interchange is put on a current basis. Separate accounts would enhance the accountability and control over interfund borrowing.

I might note here that of the four benefit components, the windfall and supplemental already are funded through separate accounts, the windfall account having been established by Congress in the 1981 amendments. Consequently, separating the social security and industry pension components into separate accounts would be the final step toward assuring clear accountability.

Although our recommendation to establish separate accounts has not been fully adopted, part of our concern was addressed by the Congress when it enacted Section 22 of the Railroad Retirement Act in the 1981 amendments, which requires reporting to the President and the Congress when there is a pending financial crisis and full benefits may not be payable. Subsection (c) provides that if benefits must be reduced, the industry pension component must be cut first. In accordance with this provision, the current financial crisis requires--barring congressional resolution--a 40 percent reduction in the industry pension component beginning in October 1983 to protect the social security component. H.R. 1646 would repeal Section 22 (c) of the Railroad Retirement Act.

As mentioned earlier, past efforts to insure the financial solvency of the railroad retirement program have not solved the Board's problems. Because there are no guarantees the current efforts will be successful, we believe Congress should consider establishing separate accounts for the social security and industry components to provide greater assurance that social security equivalent benefits are protected. If not, Section 22(c) should be retained.

WINDFALL OBLIGATION

Before 1975, it was possible for a railroad employee with periods of non-railroad related employment to qualify for both railroad retirement and social security benefits. These persons (and their spouses and survivors) were known as dual beneficiaries.

Because the benefit formulas under the social security and railroad retirement programs are weighted in favor of persons with low lifetime earnings, dual beneficiaries receive more in combined railroad retirement and social security benefits than they would have had all their earnings been earned and their benefits calculated under one program. The difference between what dual beneficiaries receive in combined benefits calculated separately under each program and what they would receive if all of their earnings were computed under one program is termed a "windfall."

Historically, the cost of this windfall has been assumed by the Board's Railroad Retirement Account. To rectify the financial problems the account was experiencing, the Railroad Retirement Act of 1974 made two major changes affecting windfall. One, while "grandfathering" in employees and retirees already eligible for windfall, eliminated these benefits for new beneficiaries. The other provided for funding windfall through the appropriation of general revenues.

In 1976 the Board estimated that annual windfall appropriations of $250 million would be needed for 25 years. These estimates have continually escalated--reaching $440 million for 1982. Except for 1976, actual general revenue appropriations for windfall have been less than the Board estimated and paid.

Although general revenue appropriations were not adequate to fully fund the total amount of windfall to which beneficiaries were entitled, the Board continued to pay full windfall benefits from retirement account reserves. Thus, the account continued to absorb a portion of the windfall cost and by fiscal 1981, the account's reserves had been reduced by about $1 billion. In 1981, a separate Dual Benefits Payments Account was established and windfall benefits have since been limited to the amount appropriated.

This shortfall between appropriated general revenues and the actual windfall payment, and the related $600 million in interest that could have been earned, has become a point of controversy. Based on our work, we have taken the following positions and offer the following observations.

In 1981, we recommended that the Congress reevaluate to what extent the Treasury should continue to fund windfall costs through general revenues. Under the Board's retirement program, retirees and dependents who receive windfall benefits, in most cases, have their private pensions reduced. These reductions result in a reduced financial obligation on the retirement account. If the annual Federal appropriation for windfall was predicated on only the amount the Board pays as a result of windfall benefits (windfall cost less the private pension offset) the Board's estimate of the total amount of windfall appropriations needed from fiscal year 1981 to 2000 would be reduced by about $2 billion. Also, present Board estimates of the Federal Government's obligations for past windfall shortfalls are gross estimates that do not take into consideration the reductions in the private industry component which reduce the financial obligation of the retirement account.

We believe this is pertinent because H.R. 1646 calls for providing about $2 billion in general revenues to repay the gross rather than net amounts used, from 1975 through 1981, from the account to pay windfall benefits and lost interest.

In July 1982, we issued a report to the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education on the impact reductions in windfall appropriation levels could have on beneficiaries. We pointed out that the overwhelming portion of windfall benefits goes to family units in the upper benefit ranges. Our analyses of beneficiaries' dependence on the full $440 million windfall entitlement for 1982 showed that:

--More than 95 percent of the families would have total benefits above the average social security benefit.

--Almost 80 percent of the families would have total benefits above the average railroad retirement pension.

We also pointed out that, except for totally eliminating windfall funding, reductions in appropriations did not appear to result in substantial additional numbers of families falling below selected benefit cutoff points. For example, at full entitlement ($440 million), about 21 percent of all windfall families were below the average railroad retirement pension. If the appropriation had been reduced to $350 million, about 24 percent of the families would have been below this benefit level.

NEED TO CHANGE TAX EARNINGS BASE FROM MONTHLY TO ANNUAL BASIS

In a March 1981 report, we recommended that wage taxes for the social security component be based on annual rather than monthly maximum earnings. S. 1076 contains a similar proposal. If adopted, it would result in more revenues for the Board's retirement account.

Under the current railroad retirement taxing provisions, the Board transfers to Social Security, through the financial interchange, more in taxes than it collects. This happens because social security taxes are collected on an annual wage base, but railroad contributions for the social security component are calculated on a monthly maximum wage base equal to one-twelfth of the annual social security wage base. If a railroad employee works continually for a full year, and has earnings at least equal to the monthly maximum wage base, the tax collections would be equal under either program. If, however, a railroad employee works intermittently and earns more in one month and less in another, the monthly maximum wage base provision could result in less taxes for the Board than would be payable under social security.

Also, since retirement benefits are based on taxable earnings, the railroad retirement social security component benefit would be somewhat higher with the higher taxable base. This would offset some of the increased revenues.

RETIREMENT TAX DEPOSIT REQUIREMENTS

The condition of the retirement account would be improved if the recommendations in our September 1981 report on the timeliness of employer tax deposits were adopted. Present Treasury regulations allow railroad employers to make less frequent deposits of retirement contributions than other employers. In fiscal 1980, the railroad retirement program could have earned almost $19 million in additional interest had Treasury required deposit of taxes more frequently. We recognized in our report that railroad employers could incur some additional administrative costs in switching to more frequent deposits.

The Board is in favor of speeding up tax collections and has been negotiating with Treasury. To date, Treasury has not acted on our recommendations.

DISCONTINUING STUDENT BENEFIT FOR POSTSECONDARY STUDENTS

In 1979, GAO recommended that social security benefits for postsecondary students be discontinued. The Omnibus Budget Reconciliation Act of 1981 amended the Social Security Act to gradually phase out this benefit. The act also affected postsecondary student benefits paid under the Railroad Retirement Act.

It is still possible, however, for new beneficiaries to obtain a postsecondary student benefit under the industry pension component. The proposals before the Congress call for elimination of such benefits. We are in agreement with these proposals for the same reason we favored eliminating such benefits under social security.

RAILROAD UNEMPLOYMENT AND SICKNESS INSURANCE

In 1938 the Railroad Unemployment Insurance Act established a separate unemployment program for railroad workers, to be administered by the Board. A separate program for the railroads was justified as a solution to problems arising from differences in State unemployment programs. Employees doing the same job in different States would collect different benefits, and traveling employees might be unable to collect in some States.

Unions favored the program because it offered broader coverage and more security than the State systems. Railroad management generally opposed the act, fearing that broader benefits ultimately would cost more in taxes.

In 1946, the act was amended to add sickness benefits, payable on essentially the same basis as unemployment benefits, to employees out of work due to illness or injury, regardless of whether the condition was work related.

The unemployment and sickness insurance program is funded on a trust fund basis through a payroll tax on railroad employers. The tax can range from 0.5 percent to 8 percent of taxable wages depending on the trust fund balance. The tax rate, currently 8 percent, applies equally to all employers. When tax collections are insufficient to pay benefits, the program can borrow from the retirement account to be repaid when the trust fund has more cash than needed to pay benefits.

Since first authorized to borrow in 1959, the program has borrowed frequently from the retirement account. Before 1982, the loans were repaid. Beginning in 1982, however, a surge in unemployment claims required a significant increase in borrowing from the retirement account with little potential for repayment. As of March 1983 the program owed the retirement account $478 million. The Board estimates that by 1988 the unemployment and sickness insurance trust fund will owe the retirement account more than $1.8 billion.

During earlier hearings on the two bills proposed to assure the solvency of the Board's railroad retirement and unemployment and sickness insurance programs, witnesses have testified that railroad employees would be better off under State administered unemployment programs--because States pay higher benefits.

While the maximum weekly benefit payable in many States is higher than the maximum weekly available under the Board's program, non-railroad workers are not necessarily collecting the maximum benefits. Also, there are advantages available to the unemployed railroad worker. States have waiting periods and other restrictions on collecting benefits and will reduce or eliminate benefits whenever the beneficiary has other earnings. There is no waiting period for unemployment benefits under the Board's program. Benefits are payable for as little as one day of unemployment regardless of other earnings during that week and, benefits are payable to striking and suspended employees and discharged employees appealing dismissal.

In addition, non-railroad workers may be required to seek employment outside of their industries. Railroad workers need only be actively seeking employment in the rail industry, and, in fact, may be discouraged from seeking employment outside the industry for extended periods because of the "current connection" provision of the Railroad Retirement Act. Maintaining a current connection with the rail industry is important for determining certain retirement benefits.

The Congress is faced with a difficult decision concerning the future financing of the railroad unemployment and sickness program. The two bills before you propose very different courses of action and we have not done enough prior work or analysis to suggest a course of action.

TAXATION

I would now like to turn to the subject of taxes. I discussed earlier our prior recommendations to change the monthly maximum taxable wage base for the social security component to an annual maximum and to require more timely tax deposits by railroads. I would now like to address the industry pension component taxable wage base and the taxing of benefits.

Taxes on wages

The taxable wage base for the industry pension component is lower than that for the social security component. The Office of Management and Budget estimates that for 1984 the lower wage base will cause a revenue loss of about $200 million. Also, the tax rate increases for the industry pension component would go into effect on July 1, 1984, under the proposals in H.R. 1646, and on July 1, 1983, under the proposals in S. 1076, while tax increases for the social security component will go into effect on January 1, 1984.

The Congress may wish to consider bringing the railroad retirement program more in line with the social security program by increasing their tax rates at the same time and by making the wage base and the tax deposit requirements the same under each.

Legislation to tax benefits

The Social Security Amendments of 1983 require that a portion of social security benefits be taxed and the revenues from this tax be returned to the trust fund from which the benefits were paid. The amendments specifically include the railroad retirement social security component benefit in the definition of social security benefits and accordingly revenues from taxing such benefits are to be forwarded to the railroad retirement account.

Neither H.R. 1646, S. 1076, nor the Social Security Amendments are clear on how the revenues from taxing the social security component should be treated in the financial interchange. The House Energy and Commerce Committee's report on H.R. 1646 stated that none of the revenues would be subject to the financial interchange.

Excluding the revenues from the tax on the social security component from the financial interchange may not be in conformance with the intent of the Railroad Retirement Act. Such exclusions would cause social security to lose revenues it would have received if rail workers were covered under social security and provide revenues to the Railroad Retirement Account beyond those needed to defray the cost of providing the social security component to railroad beneficiaries. Moreover, the additional revenues would be available to pay the industry pension component of the benefit.

Both H.R. 1646 and S. 1076 would tax the industry pension benefit component and return the revenues from such taxes to the retirement account. Both bills look upon the tax on the industry pension as a retiree contribution to solving the railroad retirement financial problems. The revenue from this tax is estimated to be about $600 million over the next 5 years. We note that the railroad industry pension would be taxed as income as private and Federal pension benefits are but that these taxes would not go into general revenues.

H.R. 1646 and S. 1076 would also tax the windfall benefit, H.R. 1646 returning the revenues to the retirement account and S. 1076 returning the revenues to the Treasury. H.R. 1646 would return such revenues to the retirement account even though the benefit is to be paid from general revenue appropriations.

Another matter involves the sickness benefit paid by the Board. In 1982, the Board paid about $56 million in sickness benefits to about 74,000 beneficiaries. These benefits, however, are not taxed as income as are similar benefits under other public and private programs.

I call these four matters to your attention because the Congress might want to (1) clarify whether the tax revenues on the social security component should be covered under the financial interchange; (2) adopt the option of returning revenues from proposed windfall taxes to the Treasury since such benefits are paid from general revenues; (3) consider whether returning to the retirement account revenues from taxing the industry pension benefit, as is being proposed, is an appropriate subsidy; and (4) consider whether sickness benefits should be viewed consistently with similar benefits from other programs.

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Messrs. Chairmen, that concludes my statement and we would be happy to answer any questions.

KEEPING THE RAILROAD RETIREMENT PROGRAM ON TRACK--GOVERNMENT AND RAILROADS SHOULD CLARIFY ROLES AND RESPONSIBILITIES

GAO/HRD-81-27, March 9, 1981

The railroad retirement program evolved from an industry-funded plan for retired workers to one which contains both social security and private pension elements. Funds to finance these elements consist of taxes paid by railroad workers and employers, transfers from social security trust funds, and general revenue appropriations from the Federal Government.

The Railroad Retirement Board predicted that it might not be able to pay total benefits by 1982. To ensure that railroad beneficiaries would receive, at least, the social security portion of the retirement benefits, GAO recommended that the Congress require that funds for that portion be used for that purpose only and that railroad employees and employers pay taxes for those benefits on the same basis as employers and employees under social security.

To help ensure that total benefits will be paid, GAO also recommended that Congress decide to what extent the Federal Government will fund windfall benefits for dual beneficiaries and whether certain groups, such as railroad beneficiaries' remarried widows and divorced spouses, which were not covered under social security retirement, should be.

INACCURATE FUND TRANSFERS BETWEEN SOCIAL SECURITY ADMINISTRATION AND RAILROAD RETIREMENT BOARD

GAO/HRD-83-2, April 4, 1983

Since 1958 the Social Security Administration (SSA) has paid more than $17 billion to the Railroad Retirement Board through an annual fund transfer (financial interchange) required by law. The interchange is designed to place the social security program in the same financial position in which it would have been if railroad employment had not been excluded from social security coverage.

GAO found that the Board, which performs all the interchange calculations, makes frequent errors, uses a statistical method that makes imprecise estimates, and includes inappropriate factors to calculate the amount due. As a result, both over- and underpayments are made by SSA. GAO estimates that the net effect of such errors and inefficiencies in one financial interchange was that SSA paid the Board about $40 million more than it should have.

GAO recommended that the Board improve its calculations accuracy and that SSA do more to ensure that the amount it pays the Board is proper.

RELATIONSHIP OF DUAL BENEFIT WINDFALL PAYMENTS TO TOTAL RAILROAD RETIREMENT BENEFITS

GAO/HRD-82-97, July 12, 1982

GAO examined the (1) relationship between railroad retirement dual benefit windfall payments and the total railroad retirement payments beneficiaries receive and (2) potential effect on railroad retirement beneficiaries of reduced windfall payments under various appropriation levels.

The review showed that, although windfall makes up a larger share of total income for families whose total benefits are below the poverty level, the overwhelming portion of windfall funds goes to family units in the upper benefit ranges. The oldest age groups, persons over 85 years old, are most affected by cuts in windfall.

Except for totally eliminating windfall funding, reductions in appropriations do not appear to result in substantial additional numbers of families falling below selected benefit cutoff points. Relatively nominal funding would be required to protect certain family units in the lower benefit ranges from incurring reductions in benefits because of cuts in windfall.

GAO's analysis of beneficiaries' dependence on the full $440 million windfall entitlement estimated for fiscal year 1982 showed that:

--More than 95 percent of the family units would have total benefits above the average social security benefit and receive more than 97 percent of the windfall entitlement.

--Almost 80 percent (or about 230,000) of the family units would have total benefits above the average railroad retirement pension and receive more than 80 percent of the windfall entitlement

--A small proportion (3.4 percent) of all family units had total benefits below the poverty level at the current appropriations level. A relatively minimal amount ($923,000) would be needed to restore losses in total benefits which occurred because of cuts in their windfall.

--Total monthly benefits to retirees entitled to windfall ranged from less than $200 a month (135 family units receiving) to more than $1,200 a month (68,021 family units receiving).

--Sole survivors are economically vulnerable to windfall cuts because of their low average monthly benefits ($548) as compared to couples ($1,178).

RAILROAD RETIREMENT BOARD CALCULATIONS OF ANNUAL APPROPRIATIONS NEEDED TO PHASE OUT WINDFALL BENEFITS

GAO/HRD-79-33, January 11, 1979

The Railroad Retirement Act of 1974 authorized level annual appropriations of general revenue from 1976 through 2000 to finance the costs of phasing out the windfall portion of the railroad retirement benefit. The original estimate was that the windfall benefits would cost $250 million annually over the 25-year period.

GAO reviewed the calculations of the annual appropriations needed to phase out windfall and projected (1) an increase of about $2.9 billion in estimated windfall costs above the $7.1 billion originally estimated by the Board's actuary and (2) an increase of about $3.5 billion in general revenue appropriations through the year 2000. Using the present funding method, 21 level annual appropriations of $415 million beginning in 1980 would be needed to pay future windfall benefits.

GAO also identified an alternative method of financing the windfall appropriations on a pay-as-you-go cash basis, which would stretch out payments through the year 2046. A table showing required windfall appropriations under the cash basis methods was provided.

DELAYS IN RECEIVING AND INVESTING TAXES ARE REDUCING RAILROAD RETIREMENT PROGRAM INTEREST INCOME

GAO/HRD-81-112, September 24, 1981

Under the railroad retirement program, employers are required to deposit retirement taxes monthly, instead of semimonthly, biweekly, or even more frequently as is the case for social security taxes. In fiscal year 1980, the railroad retirement program could have earned about $25.9 million in additional interest income if railroad employers were required to deposit retirement taxes as frequently as other employers deposit social security taxes and such taxes began earning interest as soon as collected.

GAO recommended that the Secretary of the Treasury should require more frequent deposit of railroad retirement taxes. Also, Treasury and the Railroad Retirement Board should look into ways to reduce delays in investing railroad retirement taxes to increase the railroad retirement program's interest income.

SOCIAL SECURITY STUDENT BENEFITS
FOR POSTSECONDARY STUDENTS
SHOULD BE DISCONTINUED
GAO/HRD-79-108, August 30, 1979

The basic purpose of the social security program is to provide some minimum family income in the event of the taxpayer's retirement, disability, or death.

A marginal program, student benefits, diverted tax money from that basic purpose. During the 1977-78 school year, it diverted $1.5 billion and was expected to divert $2.2 billion in 1979-80. It gave many students more money than their school costs warrant, inequitably curtailed--or barred altogether--benefits to other students, deprived nonstudents, and contributed to other Federal aid programs paying unneeded benefits. This was going on while, even after imposing increased taxes upon Social Security contributors, there was doubt the system could fulfill its basic purpose without still further increases.

Were student benefits to postsecondary students to be terminated effective fall 1980, GAO estimated net first-year savings to the Social Security taxpayers would be $1.4 billion, and the net savings to all taxpayers in that year would be about $1.1 billion. GAO recommended that postsecondary student benefits be discontinued.

Chairman PICKLE. Thank you, Mr. McGough.

Your testimony will be very helpful and is rather involved and sometimes it is hard to follow. I find that the railroad retirement program is a very elusive matter to consider and it is hard either to understand or to grasp all the rationale that has gone into these programs.

We have a lot of witnesses but I want you, before we start asking questions, to tell me again in layman's language how this interchange system came about. What is the rationale behind it?

Mr. MCGOUGH. I will take a shot at it and then we may have a couple of other attempts at it before we can make it clear. Of course, as we mentioned in the statement, initially the railroad retirement program was set up independently and had enough contributions from employers and employees to pay the benefits that were structured into the program. However, the demographics of the program changed—particularly the ratio of workers to beneficiaries, In 1951 there was an attempt to protect part of the railroad retirement program by providing the additional funds that social security would have paid if railroad retirees had been covered by social security. Those are my own terms, not the terms in the law.

Chairman PICKLE. Now that recommendation for an interchange came from railroads, not from the Board? They initiated the request to coordinate or have the interchange; is that correct?

Mr. KULANKO. I understand there was such a proposal by labor and management at that time.

Chairman PICKLE. Labor and management both proposed that they come under social security and be coordinated with it?

Mr. MCGOUGH. And in doing that social security was not supposed to be any better or worse off than if those people had been under its program from the inception. This is an underlying concept that we need to keep in mind in understanding the interchange as well.

Mr. KULANKO. If everybody had been covered under the social security system, social security would have, of course, been receiving the taxes that are paid on railroad employee wages and would have been paying benefits out to these individuals. Since there were more beneficiaries and benefits paid than there were workers and taxes coming in, the net effect over time was going to be that social security would have paid more if all these people were under its system than it would if the people were not under the system.

This principle was laid forward. It was to make sure that social security neither gained nor lost by rail workers being outside of the social security system, and the simple effect of that over time was to provide a significant amount of funds to the railroad retirement system. It is interesting to note that no one ever suggested that there be a similar financial interchange for the civil service system, for example. The same principle could be applied. Social security either gains or loses by civil service workers not being under social security. But again, this is a principle that was proposed. It was adopted in 1951 and has been in place since.

Chairman PICKLE. If we had not established the interchange system and if the railroad retirement system had continued, is it safe to say that the railroad retirement system would have been broke long since?

Mr. McGough. I think that it is fair to say—unless some drastic changes were made to the structure of the program. As we pointed out, some $20 billion has already been transferred by social security to help pay the benefits of railroad employees.

Chairman Pickle. The theory was that by the interchange social security is not to pay out any more than it would have had they covered all the employees. In other words, it is supposed to come out equal. If we did cover railroad employees we would be paying out a certain amount of money additionally. Therefore, because we did not cover them we therefore would give them this extra amount of money through the interchange.

Mr. McGough. Only for those retirement program components that are the same as social security.

Chairman Pickle. So nobody would be hurt; that is, the social security program is supposed to be no better off or no worse off than they would be had they not coordinated. And yet you testify that over a period of the last 25 years or more, the interchange has cost the social security system over $20 billion.

Somewhere, we have lost equity, haven't we?

Mr. McGough. Well, what has happened, as you know, the demographics changed. As I mentioned earlier, there were fewer and fewer workers supporting more and more retirees on the railroad side, this caused program deficits.

These same deficits would have accrued if those people were under social security for the entire time. In fact, the reverse of the railroad beneficiary/worker ratio exists for the general population that social security serves. Under social security there are three workers to approximately one beneficiary.

Chairman Pickle. I think the committee has to accept the fact that the interchange system was set up long before our time. It is operating, and now we have got to consider what we do by way of adjustment to either change that system or all these other different aspects. It was not really given to us to try to philosophize how it should have been done 25 years ago, but what do we do under the circumstances at this point.

Mr. Anthony, do you have any questions?

Mr. Anthony. I have a question, Mr. Chairman on one of your recommendations, on page 19, concerning the tax setup: Do you have a projection if these recommendations were considered positively? From your viewpoint, what would be the impact on the financial circumstances of the railroad retirement?

Mr. McGough. No, we do not have that worked up to give you right at this moment, but we can take a shot at working it out for you, sir.

[The information follows:]

PROJECTED IMPACT OF RAILROAD RETIREMENT TAX OPTIONS ON RAILROAD RETIREMENT, SOCIAL SECURITY, AND TREASURY ACCOUNTS—FISCAL YEARS 1984–88

[In millions of dollars]

Tax option	Impact on Railroad Retirement Account	Impact on Social Security Trust Fund	Impact on Treasury General Revenue
Include tier I revenues in the financial interchange calculation	[1] −341	+341	0
Provide revenue from taxing windfall benefits to the U.S. Treasury	0	0	([2])
Provide revenue from taxing industry pension benefit to the U.S. Treasury rather than railroad account	−647	0	[1] +647
Tax employee sickness benefits	0	0	([2])

[1] Congressional Budget Office estimate.

[2] There would be additional revenues for the Treasury; however, reliable estimates are not available.

Chairman Pickle. Mr. Pease, do you have any questions?

Mr. Pease. No, Mr. Chairman. I am still absorbing the materials that were presented to us this morning. I'd like to compliment the GAO on its usual excellent testimony. It is very helpful to the committee.

Mr. McGough. Thank you.

Chairman Pickle. Mr. Moore?

Mr. Moore. Mr. Chairman, thank you. I had to leave the room for a few minutes to meet with constituents, but everything I read so far that the GAO has recommended in prior reports looks good to me as something we ought to adopt.

Let me ask you this: Can you quantify the various things you have recommended in prior reports; what that would do in terms of money to the railroad retirement system, so we know if we adopted all of the things you recommended, how much we still must do in order to make the system solid?

Mr. McGough. I can put it in perspective from now until the 1988 period. The proposals before you, I think, are talking in the vicinity of $10 billion. As I mentioned and have caveated in my statement, our recommendations would not go very far in making up those kinds of dollars, but we will make an effort to quantify and put it in the same time period, so you can see what benefit can be derived from quicker tax deposits, changing the tax base, and those things which would bring additional revenues into the retirement account.

Mr. Moore. So you don't have those figures this morning?

Mr. McGough. I do not have them with me this morning.

Mr. Moore. I would like to ask, Mr. Chairman, that we leave the record open for the GAO to give us these figures of what their recommendations here would bring in on the same timeframe as the bills we have before us. I want to ask if you would also, as a courtesy to me—I am very interested in this—if you would send to my office, in addition to putting into the record, the results of your findings.

I do compliment you on your testimony, and I compliment you on looking at this in the past, and maybe we can make some sense out of this with your help.

Thank you.

[The information referred to follows:]

PROJECTED EFFECT OF IMPLEMENTING GAO REPORT RECOMMENDATIONS—FISCAL YEARS 1984–88

[In millions of dollars]

Recommendation	Railroad Retirement Account	Social Security Trust Fund	Treasury General Revenues
Establish financially independent trust funds	0	0	0
Compute windfall appropriation based on amount RRB pays	−414	0	+414
Accelerate retirement tax deposits	+102	0	0
Eliminate post-secondary student benefits	[1] +30	0	0
Base wage taxes on annual rather than monthly earnings; and raise tier II base to tier I level	[2] +1,411	0	0

[1] Congressional Budget Office estimate. Railroad Retirement Board officials estimate that savings are negligible.

[2] Railroad Retirement Board estimate.

Chairman PICKLE. Mr. Hance?

Mr. HANCE. Thank you very much for your testimony. I received a nasty letter yesterday, which we get from time to time, from a railroad clerk in Alpine, Tex. He said, "The thieving Congress is going to take our money and we have never gotten anything back except what we put in."

I know your testimony clarifies that somewhat, but I would like to ask you to comment. I think there are some people under the assumption that they paid into railroad retirement, and there has never been any money out of general revenue or any other fund to supplement it.

Would you just make a quick comment on that?

Mr. MCGOUGH. Again, I apologize. Maybe my colleagues here have the information which would tell you how long it takes a beneficiary to recoup their investment, but it is not very long, as I understand it. Also, as you mentioned, general revenues are being used to defray some of the costs of the windfall benefits that railroad retirees are getting.

GAO often gets similar letters. I think it is a question of educating the public. This has been a big problem with social security—educating the public on what the basic purpose and mission of those programs are, and giving them some basic program information as to how long it takes them to recoup their investment. Social security turns out to be a good investment.

Mr. HANCE. Do you have figures on how long it takes them to recoup?

Mr. DOLAN. Mr. Hance, the board estimates about 18 months for an individual to recover his contribution to the program.

Mr. HANCE. What age is the retirement? Is retirement the same as social security?

Mr. DOLAN. There are some exceptions to that. One of the advantages under the railroad retirement program is the 60/30 benefit which permits a railroad employee with 30 years of service to retire at age 60 with a full benefit. That is the way it is today. One of the proposals, of course, in one of these bills is to change that slightly.

As you know, under social security an individual cannot retire until at least age 62, and when he retires at age 62, he gets a reduced benefit. It is cut back a certain percentage for the number of months that he retires under age 65.

So, there is an earlier retirement authorization under the railroad retirement program.

Mr. **Hance**. And they can retire with full benefits at 60?

Mr. **Dolan**. Yes, sir.

Mr. **Hance**. What is the average benefit that is paid?

Mr. **Dolan**. The most recent information I have available to me right here, and this is available to the general public, shows that the average employee annuity that was awarded in November 1982 was $743.87. The average spouse annuity in November 1982 was $221, and the average survivor annuity for an aged widow or widower will be provided for the record.

Mr. **Hance**. What is the maximum benefit?

Mr. **Dolan**. There is a family maximum. I can't give you a definite answer. A lot of circumstances go into that family maximum.

Another thing that has to be taken into consideration is the dual entitlement situation; is the individual collecting under both programs. I have seen some family benefits running around $1,800 a month.

Mr. **Hance**. Could you check all that information and get back with me?

Mr. **Dolan**. Yes, sir.

[The information follows:]

MAXIMUM FAMILY BENEFIT FOR RAILROAD RETIREMENT PENSIONS

The maximum railroad retirement family benefit depends upon factors such as annual earnings and cost of living adjustments after initial award. The maximum amount payable to an employee and spouse at the end of calendar year 1981 was about $1,667 under the Railroad Retirement Act, compared to about $1,100 under the Social Security Act. This example is based on a rail employee who began work in 1937 and continuously earned the maximum creditable toward retirement benefits each year through 1981. For example, under both systems, annual earnings up to $29,700 were creditable for 1981. This maximum applies only at the time of initial award, and benefits are subsequently increased for the cost of living regardless of whether or not a maximum applied at the time of initial award. This maximum does not include windfall and supplemental payments. In addition, some families receive unusually high benefits because each member has employee and spouse eligibility. Monthly benefits for these families may total $2,900.

The table below shows the number of families receiving high monthly benefit amounts as of December 31, 1981.

	Number of families	Percent of all families
Monthly benefit:		
$1,000 to $1,200	42,100	11
$1,200 to $1,600	52,000	12
$1,600 or more	8,900	2

Sources: RRB estimates.

Mr. **Hance**. The last thing I want to ask you is, if we did do what this clerk wanted, just so he can get his benefit for approximately 18 months, most retirees would receive benefits; is that right?

Mr. **McGough**. As Mr. Dolan mentioned, it would be affected greatly by whether he has a wife and any dependent children. The monthly benefits would be much higher if he has a wife and any children in his retirement years. So, the period would be considerably less.

Mr. **Hance**. So, the problem not only with this retirement system, but seemingly with every other retirement system, would be the benefits that the Congress would wind up funding in later years.

It is somewhat like the fellow charged with being drunk and setting the bed on fire. He went in front of the judge, and he said, judge, it's OK to pay the fine for being drunk, but the bed was on fire when I crawled into it.

I think that is the kind of position we face in trying to solve the problem.

Thank you, Mr. Chairman.

Chairman **Pickle**. Mr. Frenzel?

Mr. **Frenzel**. I am sorry that I did not hear all of your testimony. From what I have heard and read briefly, it looks as if we have a four-part program which we authorize. Is that an accurate description?

Mr. **McGough**. Yes, sir.

Mr. **Frenzel**. Well, I suppose tier I can be assumed to have been temporarily repaired by our chairman's previous good work. Tier II looks as if it is wholly in the hands of the private government, or rather of the government. Your testimony indicated that the Federal Government is paying almost half of the tier II expenses.

Mr. **McGough**. No. Our testimony indicated that that benefit is being paid by employee contributions which are commingled with the revenues in the overall retirement account.

Mr. **Frenzel**. Who are they borrowing from?

Mr. **McGough**. Borrowing is against the revenues due from the financial interchange which is based on tier I benefit costs.

Mr. **Frenzel**. From the social security trust fund?

Mr. **McGough**. The bottom line.

Mr. **Kulanko**. Right now, there is only one retirement account. Funds for the tier II and tier I are in that same account.

Mr. **Dolan**. Mr. Frenzel, I would like to clarify that. The Board actually borrows from general revenues. The financial interchange funds that are due to the Board are, in a sense, collateral for that borrowing, and when the financial interchange is actually made, the Board has to return or repay general revenue for that borrowing.

Mr. **Frenzel**. How much has it borrowed to date?

Mr. **Dolan**. I can answer that question, Mr. Frenzel. The last I heard or looked into it to any extent was last May. They had to borrow $50 million, I think, for a period of a few days, and then it was paid back because tax revenues came in.

Mr. **Frenzel**. Where did the tax revenues come from?

Mr. **Dolan**. From the normal monthly deposits made by railroad employers and the employee's contribution to the retirement program. These are flowing in on a regular basis.

It is somewhat cyclical in the sense that 1 month of the year they get big shots and several months they get small shots, but there is a constant income coming into that program in the form of tax collections.

Mr. **Frenzel**. Do you not say here on page 2 that since 1958 social security has transferred $20 billion?

Mr. **Dolan**. Yes, sir, that is the financial interchange.

Mr. **McGough**. That is to help pay for the tier I benefits. However, that does not preclude the use of those moneys, since they are all in the same account, to pay other benefits. This is why we made such an important point of need for separate accounts for the tier I and tier II, not only for accounting but to protect the integrity of those tier I and tier II components.

Mr. **Frenzel**. What about the windfall account; is that a separate account?

Mr. **McGough**. Since 1981.

Mr. **Frenzel**. What was the basis for establishing the windfall level of benefits?

Mr. **Dolan**. I will try to answer that, Mr. Frenzel.

It went back to the original concept of the financial interchange and the problem that was caused by the dual entitlement. As we said in the testimony, initially the dual entitlement was almost entirely funded from the retirement account.

In 1974, when they amended the act, Congress believed that part of this problem was its responsibility, so it had to do something to rectify the situation. Congress decided that the dual benefit would be discontinued for new beneficiaries; however, it grandfathered in those individuals who had earned eligibility under both programs. It also decided to fund the amount of this windfall benefit from general revenue. From 1976 to 1981 Congress made appropriations to pay the windfall benefit. These funds were put into the regular retirement account; they were commingled.

The Board originally estimated that it required 25 fixed appropriations of $250 million to cover windfall benefits until they would be completely wiped out. That estimate was quite a bit understated. The estimates kept escalating, and, as we pointed out, reached $440 million by 1982.

The problem was that the Board continued to pay the full windfall benefit and yet did not get enough appropriation to cover it. So again, the retirement account was absorbing this difference. In 1981, the Congress set up a separate trust fund, and that trust fund is to be used to handle the windfall appropriation. The Congress said that the Board would not pay more than Congress appropriated—even if the individual is entitled to more. That is why you have a separate account.

Mr. **Frenzel**. There are now three times as many beneficiaries as there are employees in the system?

Mr. **McGough**. That is correct.

Mr. **Frenzel**. Your testimony mentions something about postsecondary education benefits. What are those, please?

Mr. **McGough**. Those are benefits previously paid under social security that are being phased out over a 3- or 4-year period of time. These benefits entitle beneficiaries' children to a certain amount of money to fund their postsecondary education.

GAO issued a report recommending that social security's postsecondary education benefit be phased out. Because there are other sources for that income and because of the financial burden already on social security to pay benefits for retirement and disability, Congress did act to phase that benefit out. This, in turn effects postsecondary student benefits paid under railroad retirement.

Mr. **Frenzel**. Thank you.

Thank you, Mr. Chairman.

Chairman PICKLE. I want to ask you two or three questions. We may submit several questions in writing for you to answer, because we want to get to other witnesses.

You recommended that you set up a separate social security account. My first question would be if you set up a separate social security account, would that jeopardize in any way the payment of tier II benefits—assuming that you set up a separate account, would that jeopardize payment of tier II benefits?

Mr. McGOUGH. I don't think it would, Mr. Chairman. We are talking about an accounting and control procedure—they are now separate benefits with separate criteria for payment and with separate contributions. If I give it some more thought, I might be able to think of some other reason, but I can't think of any reason why it would have a negative effect on tier II benefits.

Chairman PICKLE. Wouldn't tier I have to borrow from tier II, since the interchange is current, so setting up a separate account would not jeopardize the payment of tier II? Are you in agreement?

Mr. McGOUGH. Borrowing to meet tier I costs will depend on the extent to which the Congress makes the financial interchange current.

Chairman PICKLE. Would the authority to borrow currently against the interchange eliminate the need for borrowing between tier I and tier II if a separate account were established?

Mr. McGOUGH. It should, yes.

Mr. DOLAN. It would also eliminate the need to borrow from general revenue.

Chairman PICKLE. I want to be sure I understand your testimony, because you kind of phased in and out on this section 22, 22(c) primarily.

It appears from your testimony that when you recommend a separate account, that you feel that the continued payment of social security equivalent benefits is satisfactorily assured through the section 22 provision which provides that nonsocial security benefits must be cut first.

I understand that is your testimony. Is that an accurate reading of your position, and how desirable would enactment of a separate social security account be even if section 22 is repealed?

Mr. McGOUGH. I am going to ask for the others to help me with the answer. Regardless of what happens with subsection 22(c), we think the separate accounts are desirable. In fact, there is a lot of precedence, including social security, for doing that. What we said was we don't think subsection 22(c) should be changed and we think that you should have separate accounts.

Chairman PICKLE. In either event, you would keep section 22(c), not repeal it?

Mr. McGOUGH. Yes.

Chairman PICKLE. You indicate that you recommended the acceleration of these deposits. Is that an accurate observation? You are for it?

Mr. McGOUGH. That is correct.

Chairman PICKLE. Can you give me any kind of reason why they should be accelerated? Even under the social security bill we just passed we accelerated deposits from State and local governments.

Would it cost management any more than it would for any other business to get these payments in?

Mr. McGough. There would be an initial increase administrative costs to employers during the transition to an accelerated tax deposit schedule. The principal benefit in accelerating the schedule is that it gives the Board the use of those moneys for a longer period of time plus some additional interest income.

Chairman Pickle. Is there any reason why railroad system management should be given the much slower accelerated rate than all others.

Mr. McGough. The answer is no. Railroad employers should pay on the same basis that other employers pay.

Chairman Pickle. You referred to the annualization of the wage base, and it is your recommendation that we do establish an annualized wage base, rather than the monthly account.

Mr. McGough. That is correct.

Chairman Pickle. Do you want to expand on that?

Mr. McGough. You mentioned—if we explain further we may be digging into more of a conversation than you want to take time for.

Chairman Pickle. Do you recommend the annualization of the wage base? Do you recommend that for both tier I and tier II?

Mr. Dolan. Yes, I would say it should be for both programs.

Chairman Pickle. For both?

Mr. Dolan. Yes.

Chairman Pickle. All right. How would you respond—we looked at some of the testimony to the rail management's position when they say this is a very private matter between the railroad employee and management, and we shouldn't enter into the question of monthly or annualization.

Can you respond to what you think is their reasoning for that position?

Mr. McGough. I don't know that we can. You are going to have some witnesses later on this morning who would be in a much better position to answer that question than I am. I would just as soon have you direct that question to them, if you don't mind, Mr. Chairman.

Chairman Pickle. We may do that.

Do you have any other statements that you want to make to us about your testimony?

Mr. McGough. No, not at this time, except that if there is additional study or work that needs to be done, we will be happy to work with the subcommittees.

Chairman Pickle. We are going to submit additional questions to you because we need to have answers to some of the questions we have. We don't have time this morning for the privilege of going ahead further.

Do any other members have questions?

Mr. Moore. Mr. Chairman, I would like to ask, have you done any analysis at all on the unemployment compensation fund in terms of its future solvency, what kind of problems it is in, its ability to repay loans, its proposal to be able to borrow under these bills?

Mr. McGough. Not to any extent that we can shed any more light on the difficult situation that you have before you.

I think, as I mentioned, the two bills pretty much go in different directions in addressing the problem of the unemployment and sickness program financing, and unless Mr. Dolan or Mr. Kulanko have additional comment, I don't think we can provide much more input than we had.

Mr. **Dolan**. I would like to make a statement with regard to the financial status of the program. Financial projections are dependent upon estimates of employment in the industry. There seems to be extreme dearth of information in this area, except for what the Railroad Retirement Board can provide you.

The fact of the matter is that when you start trying to analyze it, you are dependent upon them for the information you need to do that. Their own projections right now indicate that that fund is going to be in debt to the tune of $1.8 billion by 1988. Employment is the basis of this estimate: it is the basis for the revenues that they expect to get, plus the benefits they expect to pay out. There is also a factor thrown into the estimate for interest that would have to be paid on debts.

The most recent projections that I was able to obtain are utilizing what I will have to call their most optimistic employment projections. They are not using their most pessimistic employment projections for that.

We seem to be quite dependent upon them at the moment.

Mr. **Moore**. The information you just stated, if I understood, is that under the best scenario, they are going to be $1.8 billion in debt, which means they can't very well repay any loans.

Mr. **Dolan**. Yes, sir.

Mr. **McGough**. It could be worse.

Mr. **Frenzel**. Would the gentleman yield?

Is there any incentive in these bills to require them to repay the loans?

Under the normal compensation programs, the States have to pay interest on what they borrow. Is there any provision here for the fund to pay interest?

Mr. **Dolan**. I would like to comment in two ways. Really there is less control under H.R. 1646 than there is with the present setup.

As I say, right now if the unemployment fund borrows from the retirement account, it has to pay interest. I can't see a specific provision in the proposals with regard to paying interest if the fund borrows the money from general revenue.

Under the regular State unemployment programs there is a provision called a penalty tax. Employers in a State which is heavily in debt to general revenue to support their unemployment program must pay an additional tax in order to help pay off that debt. The provisions of the bill that is before us do not include any type of control mechanism in any way, shape or form along similar lines. It just seems to set forth that they will be allowed to borrow and pay it back if they ever get some money.

Mr. **Frenzel**. Is there any reason why this fund could not be shifted into the regular State systems?

Mr. **McGough**. That is the debate, really. As we said, we do not feel comfortable trying to give you a position on that. We have not done enough analysis.

Mr. **Frenzel**. I didn't ask you to give me your position. I just said, can it be done?

Mr. **McGough**. In fact, that is what the administration is proposing, yes.

Mr. **Frenzel**. Thank you.

Mr. **Moore**. I just say with regard to the gentleman's question, that on page 32 of the bill, when it talks about the unemployment compensation on borrowing money from the Federal unemployment account, it says, "the same manner and subject to the same conditions, with this minor caveat, other than the conditions regarding repayment." Which simply means no interest.

Mr. **Frenzel**. And no repayment.

Mr. **Moore**. They can repay.

Chairman **Pickle**. Before we go to the next question, let me ask you, do you have a position with respect to providing for a tax in the event that they borrow from the unemployment funds, whether we go to the State or whether we continue to borrow from the regular retirement system?

Does GAO take a position with respect to that we ought to have some kind of a tax in the event they can't pay it back?

Mr. **McGough**. We haven't focused on that a great deal, Mr. Chairman.

Chairman **Pickle**. This is the third or fourth time you haven't focused. We have been trying to focus for 2 or 3 years.

We will submit that in writing and we will ask you to focus on that at that time.

Mr. Hance.

Mr. **Hance**. Your testimony said that for each one worker, there are how many beneficiaries?

Mr. **McGough**. One worker for three beneficiaries under the railroad program. One paying to three collecting.

Mr. **Hance**. Thank you. That explains the problem. They need to expand the railroad ticket.

Mr. **McGough**. If we could do away with unemployment, we would take care of the retirement program problems we were talking about just now and the unemployment insurance program problem as well.

Chairman **Pickle**. I want to thank you, representatives of the GAO, for your testimony, and we will submit additional questions to you.

Now the Chair would like to have the first panel appear before us. The panel consists of the Railway Labor Executives Association, Mr. Ole M. Berge, and the representatives from the Association of American Railroads and the National Railway Labor Conference. Will Mr. William Dempsey and Mr. Charles Hopkins take their position at the witness table.

Mr. Ole Berge is chairman of the committee on railroad retirement system. Do you have a gentleman with you?

Mr. **Berge**. Yes, Mr. Mahoney is counsel for our retirement committee.

Chairman **Pickle**. Glad to have you, Mr. Mahoney.

William Dempsey, president of the Association of American Railroads, and Mr. Charles Hopkins, chairman of the National Railway Labor Conference.

Which one of you gentlemen will submit your voluminous statement here?

Mr. **Dempsey**. We have submitted it jointly. I will make introductory remarks and Mr. Hopkins will follow.

Chairman **Pickle**. We will ask you gentlemen to proceed.

Mr. Berge, if you would present your testimony.

STATEMENT OF OLE M. BERGE, CHAIRMAN, COMMITTEE ON RAILROAD RETIREMENT SYSTEM, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY WILLIAM G. MAHONEY, COUNSEL

Mr. **Berge**. Thank you, Mr. Chairman.

My name is Ole Berge and I am president of the Brotherhood of Maintenance of Way Employees and chairman of the committee on railroad retirement of the Railway Labor Executives' Association or the RLEA, as we refer to it. I testify today in support of H.R. 1646.

This Nation's railroad retirement system antedated its social security system. In fact, the original Social Security Act based its tax benefit separation scheme on that developed in the 1935 Railroad Retirement Act. There are today some 1 million persons receiving benefits under the act, many of whom devoted their working lives to the railroad industry in large part because of the existence of the Retirement Act. Every one of the persons actively employed in the industry today began his or her railroad career protected by the provisions of that act.

The need of a Federal retirement system became clear in 1934 when the evidence became overwhelming that the railroads' private pension plans were not sufficient or equitable. The act was enacted in 1934 and, after failing the test of constitutionality, was reenacted in 1935 and has been an integral and a significant part of every railroad employee's life since that time.

Problems with the system began in 1954. Over the objections of the entire membership of the Railroad Retirement Board and most of the railway labor organizations including my own organization, the Congress eliminated the so-called dual benefit restriction, thereby allowing employees who qualify for both railroad retirement and social security benefits to receive the full benefit of both. It was estimated that repeal would place an unwarranted long-term burden upon the railroad retirement system of $385 million. However, with the onset of inflation, that trend became substantially greater. The unfunded portion of the payment was a direct drain on the railroad retirement trust fund.

In 1974 the Congress removed the provisions for dual benefits for the future but provided that it had to be phased out through those in whom it had equitably vested. The 1974 act authorized appropriations from general revenues for the phaseout of dual benefits. The cost of the phaseout program was substantially more than the amount estimated and very substantially more than the funds appropriated. The result has been devastating to the retirement trust fund. Because the fund made up the difference between the amount appropriated for dual benefits and the actual cost of those benefits, it is now about $1.8 billion poorer than it should be.

In 1981 Congress enacted amendments to the Railroad Retirement Act which should have eliminated any real basis of opposition to the system's continuation as a Federal institution. However, shortly after the enactment of the 1981 amendments an event intervened which destroyed the curative effects upon the system, namely the recession. In July 1981 some 514,000 persons were actively engaged in employment in the railroad industry. By January of 1983 that number had dwindled to 388,000, a 25-percent reduction. No economic or financial arrangement of any kind can survive when its revenue base unpredictably shrinks by 25 percent in 18 months.

Adding to the burden of this enormous loss in revenue are the withdrawals from the trust fund on a loan basis to pay unemployment benefits to the tens of thousands of employees furloughed over those 18 months. This now amounts to $650 million and of course increases each day. In addition the fund has suffered a $1.8 billion drain as a result of the failure of the Congress to provide sufficient funds to pay the dual benefits which Congress had agreed to. And finally, the moneys owed to the fund by social security are not available when and in the amounts that they should be, thereby inflicting an insuperable cash flow problem on the fund. The combination of these factors confronts the railroad retirement system with immediate and complete collapse unless remedial action is swiftly taken.

Confronted with this disaster, Chairman James J. Florio of the House Subcommittee on Commerce, Transportation and Tourism, together with Mr. Norman F. Lent, the ranking minority member of that subcommittee, wrote to the representatives of rail management and rail labor emphasizing "the critical importance of a prompt agreement between labor and management to deal with this serious situation" and urging "that such an agreement on joint recommendations be submitted to Congress by March 1, 1983."

We accepted that suggestion, met with management, and after intensive, arduous negotiations, agreed upon recommended legislation, which, while none of us like it, will avoid the imminent disaster facing us.

With some modification that agreement is embodied in H.R. 1646. The RLEA by a vote of its 20 members with 3 dissents supports that bill.

The Railroad Retirement Board actuaries have informed us that if adopted by the Congress and enacted into law, the agreed recommendations would provide a viable railroad retirement system at least until 1992 and probably into the indefinite future. The report of the Congressional Budget Office reprinted in the Energy and Commerce Committee report on H.R. 1646 would seem to confirm that conclusion. The three major items—savings, taxes, and Federal participation—are each essential to the maintenance of a viable fund. The items are mutually dependent and their enactment as a package is essential to a successful avoidance of the disaster which is about to befall all railroad retirees and beneficiaries.

The provisions of H.R. 1646 would increase taxes on employers, employees, and for the first time would place a tax on tier II benefits. Each of the amounts realized from these taxes would be placed in the retirement trust fund.

The tax increases on employers could reach 3.5 percent of taxable payroll in addition to the present 11.75 percent of taxable payroll. Both the employers and employees continue to pay the tier I tax, which is equivalent to the social security tax and which continues to increase.

The employees' tax increases under H.R. 1646 would be 0.75 percent on July 1, 1984; 0.75 percent on July 1, 1985; and, if necessary, 0.75 percent of July 1, 1986. The employees' tax increase to 4.25 percent of taxable payroll is in addition to the tier I tax that is equivalent to the tax paid under social security.

According to the CBO report the total revenues realized from the taxes between 1983 and 1988 would be $1.13 billion from the tax on employers, $758 million from the tax on the employees, and $647 million from the tax on benefits. This is a total of $2.535 billion to be added to the trust fund account.

These taxes considered together with benefits which will amount to $2.271 billion by 1988 total $4.806 billion and come to within $334 million of equaling the amount of $5.14 billion which would have to be expended from the retirement trust fund account by 1988 if there were no cuts in benefits as now planned pursuant to section 22.

More importantly, the trend line established between 1983 and 1988 strongly indicates that following 1988 the trust fund will begin to show a surplus if H.R. 1646 is enacted. An element of the Government's participation in H.R. 1646 involves the termination of the railroad unemployment insurance account's borrowing authority from the railroad retirement account and the unemployment trust fund. The labor-management agreement originally would have authorized borrowing from the General Treasury but H.R. 1646, as drafted, limits this borrowing to the Federal unemployment account. There is also provision for a return to the retirement trust fund of some $650 million borrowed by the railroad unemployment insurance account to pay unemployment benfits expended mostly since July 1981 and the beginning of the 25-percent plunge in railroad employment.

The representatives of labor and management recognize that the railroad unemployment insurance system represents a serious and vexing problem that must be addressed and resolved, and they have agreed to do so. It was not addressed during the negotiations on the railroad retirement modification simply because there was insufficient time to devote to that very complex matter and also reach a reasonable solution to the railroad retirement emergency. The parties did agree to commence working on that problem as soon as the retirement problem was resolved.

The uniformity of railroad unemployment insurance throughout each of the States of this Nation and the disparity between that system and State unemployment compensation generally in terms of qualifications for payments, amounts of payments, terms of payments, as well as the difference between the railroad compensation system and the unemployment compensation system of each of the 48 contiguous States renders a fair and equitable resolution to the problem extremely difficult. This problem cannot be resolved quickly and fairly. If the solution is to be fair it will take time, great care, and greater effort. We believe it can be accomplished and we are willing to cooperate with the committees of Congress, the administration, and management of industry in seeking a solution.

There can be no argument, however, that the paramount and immediate problem confronting us is the collapse of the railroad retirement system. That problem must be solved first. We are convinced that H.R. 1646 solves that problem at least until 1992, and probably well into the 21st century.

That concludes my testimony, Mr. Chairman, and thank you.

Chairman PICKLE. Thank you, Mr. Berge.

[The prepared statement follows:]

STATEMENT OF OLE M. BERGE, CHAIRMAN, COMMITTEE ON RAILROAD RETIREMENT SYSTEM, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is Ole M. Berge. I am President of the Brotherhood of Maintenance of Way Employes and Chairman of the Committee on Railroad Retirement of the Railway Labor Executives' Association or RLEA.

The Railway Labor Executives' Association is an unincorporated association with which are affiliated the chief executive officers of all of the standard national and international railway labor unions in the United States. The organizations whose chief executive officers are members of the RLEA are listed below:

American Railway & Airway Supervisors Association, Division of BRAC
American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood Railway Carmen of the United States and Canada
Brotherhood of Railway, Airline & Steamship Clerks
Hotel & Restaurant Employees and Bartenders International Union
International Association of Machinists & Aerospace Workers
International Brotherhood of Boilermakers & Blacksmiths

International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
International Longshoremen's Association
International Organization of Masters, Mates & Pilots
  of America
National Marine Engineers' Beneficial Association
Railroad Yardmasters of America
Sheet Metal Workers' International Association
Seafarers International Union of North America
Transport Workers Union of America
United Transportation Union

This nation's Railroad Retirement system antedated its Social Security System. In fact, the original Social Security Act based its tax benefit separation scheme on that developed in the 1935 Railroad Retirement Act. There are today some 1,000,000 persons receiving benefits under the Act, many of whom devoted their working lives to the railroad industry in large part because of the existence of the Retirement Act. Everyone of the persons actively employed in the industry today began his or her railroad career protected by the provisions of that Act.

A federal retirement act became necessary in 1934 for many reasons: The pension system of the railroad industry was ineffective and chaotic; the vast interconnected interstate operations of the very many railroads servicing the 48 states in 1934 made necessary a single uniform pension system fair to all railroad employees. Unlike the Canadian railroad retirement system which is privately maintained by the only two railroads in that country, the American railroad retirement system in 1934 consisted of separate retirement plans with a number of different unions on each of very many railroads then operating in the United States. Employees who left the service of one carrier for employment with another lost their pension credits; the qualification requirements were so high that few, if any, employees ever saw a pension check (an analysis of railroad pension benefits for the years 1925 to 1928 showed that only 17% of employees in the railroad industry would ever receive a pension - ranging from a low of about 8% for maintenance employees to about 30% for train and engine service employees); the amounts of the pensions were much too small (25% were less than $30 per month; the average was $54 per month; 2.6% exceeded $100 per month); and they were reduced beginning in 1932 by amounts ranging from 10% to 40%.

This Congress and the Supreme Court of the United States have recognized that the efficiency and effectiveness of our vital rail transportation system suffers through loss of employee morale when the demands of justice are ignored. The Congress realized the validity of that principle in 1934 and enacted the Railroad Retirement Act of 1934, which, after failing the test of constitutionality, was re-enacted in 1935 and has been an integral and very significant part of every railroad employee's life since that time.

The problems which had occurred over the years were virtually all corrected by the 1981 amendments. In 1954, over the objections of the entire membership of the Railroad Retirement Board and most of the railway labor organizations including my own organization, the Congress eliminated the so-called "dual benefit" restriction thereby allowing employees who qualified for both railroad retirement and social security benefits to receive the full benefits of both. This allowed those employees to take advantage twice of the benefit formula "weighting" favoring lower income individuals. The result was that these people got a higher social security level benefit than persons with the same amount of total employment, all of which was performed under one system or the other. For example, a person receiving $112 from both systems under the "dual benefit" restriction would receive about $139 per month upon repeal of that restriction. In 1954, it was estimated that repeal would place an unwarranted long-term burden upon the railroad retirement system of $385 million. However, with the onset of inflation, that drain became substantially greater. The unfunded portion of the payment was a direct drain on the Railroad Retirement Trust Fund.

In 1974, the Congress removed the provisions for dual-benefit for the future but provided that it had to be phased out through those in whom it had equitably vested. The 1974 Act authorized appropriations from general revenues for the phase-out of dual benefits. The amounts authorized were to be sufficient to fund on a level payment basis over the years 1976-2000, the dual benefit for new accruals and for beneficiaries on the rolls. The annual amount was to be reviewed every 3 years at the time of each actuarial valuation. The first three transfers were $250 million each, the fourth and fifth were $313 million each, and the sixth was $350 million. However, the cost of the phase-out program was substantially more than the amount estimated and very substantially more than the funds appropriated. The result has been devastating to the Retirement Trust Fund. Because the Fund made up the difference between the amount appropriated for dual benefits and the actual cost of those benefits, it is now about $1.8 billion poorer than it should be. Obviously, for such a drain to continue would utterly destroy the Railroad Retirement System. And we believe it to be most significant that no employee who spent his entire working life in the railroad industry has received one cent of dual benefits and yet his pension is now threatened by the huge unreimbursed withdrawals from the Trust Fund to pay those benefits.

In 1981 the Congress enacted amendments to the Railroad Retirement Act which eliminated any real basis of opposition to the system's continuation as a federal institution. Those amendments isolated the dual benefit obligation into a separate account to be paid out of general revenues with authority in the Board to reduce that benefit if Congress decided not to honor the commitment it made in 1954 when it lifted the dual-benefit restriction. Indeed, the Congress did not provide sufficient funds to pay full dual benefits and the Board had to reduce that portion of the pensions to retirees by 15% for FY 82.

In addition, the employee tax was raised 2% over the social security tax and the tax on railroads was increased by 2 1/4% which with other adjustments in the formula limited the then existing program deficit and financed an improved formula for Tier II benefits and extended cost of living increases on the Tier II benefits.

Shortly after the enactment of the 1981 amendments, an event intervened which destroyed their curative effects upon the System: the recession. In July 1981, some 514,000 persons were actively engaged in employment in the railroad industry. By January 1983, that number had dwindled to 388,000: a twenty-five percent reduction! No economic or financial arrangement of any kind can survive when its revenue base unpredictably shrinks by 25% in 18 months.

Adding to the burden of this enormous loss in revenue are the withdrawals from the Trust Fund on a loan basis to pay unemployment benefits to the tens of thousands of employees furloughed over the past 18 months. This now amounts to about $650 million and, of course, increases each day. In addition, the Fund has suffered the $1.8 billion drain which I mentioned a moment ago as a result of the failure of the Congress to provide sufficient funds to pay the "dual benefits" which Congress had agreed to do. And finally, the monies owed the Fund by Social Security are not available when and in the amounts they should be thereby inflicting an insuperable cash flow problem upon the Fund.

The combination of those factors confronts the Railroad Retirement System with immediate and complete collapse unless remedial action is swiftly taken.

Pursuant to its duty under Section 22 as appended to the Act in 1981, the Railroad Retirement Board has formally informed the President of the United States, the Speaker of the House and the President of the Senate that on October 1, 1983, all retirees'

Tier II benefits will be reduced by 40% and this cut will rise to 80% by October 1, 1984.

Confronted with this disaster, Chairman James J. Florio of the House Subcommittee on Commerce, Transportation and Tourism,, together with Mr. Norman F. Lent, the ranking minority member of that Subcommittee, wrote to the representatives of rail management and rail labor emphasizing "the critical importance of a prompt agreement between labor and management to deal with this serious situation" and urging "that such an agreement on joint recommendations be submitted to Congress by March 1, 1983."

We accepted that suggestion, met with management and after intensive, arduous negotiations, agreed upon recommended legislation, which while none of us like it, will avoid the imminent disaster facing us.

The recommendations embrace three major categories:

1) Selective adjustments in benefits to produce the greatest savings to the Trust Fund while having the least effects upon the beneficiaries of the Fund;

2) An increase in taxes upon both employees and carriers; and,

3) A return to the Trust Fund of the depletions caused by the underfunding of "dual benefits" and unemployment insurance payments; and, permitting the Trust Fund to obtain monies owed it by Social Security on a current basis.

The elements of this agreement were included in H.R. 1646 introduced by Chairman Florio and the RLEA by a vote of its twenty members, with 3 dissents, supports that bill.

As I said a moment ago, none of us like the agreement; we would have preferred to effect no change in benefit or tax levels but it was simply not in the cards. We did what we felt was the very best we could with a very bad set of circumstances.

The Railroad Retirement Board actuaries have informed us that if adopted by the Congress and enacted into law, the agreed recommendations would provide a viable Railroad Retirement System at least until 1992 and probably into the indefinite future. The report of the Congressional Budget Office reprinted in the Energy and Commerce Committee Report on H.R. 1646 would seem to confirm this conclusion. The three major items (savings, taxes, and federal participation) are each essential to the maintenance of a viable Fund. The items are mutually dependent and their enactment as a package is essential to a successful avoidance of the disaster which is about to befall all railroad retirees and beneficiaries. The elimination of any element would cripple the efforts which have been made. All participants (retirees, employees and management) will be called upon to sacrifice as a result of this plan. We sincerely urge the Congress to join with them and insure that this plan succeeds by returning to the Retirement Trust Fund the monies owed it and which are vital to its existence.

We again emphasize that while the Railroad Retirement System is included in the Federal budget the monies expended in benefits are obtained through tax revenues from the industry only, with the exception of the "dual benefits". Considered as a federal budget item, the reductions in benefits and increases in taxes should improve "the budget picture" while actually not affecting the Federal Government's income or expense in a real sense. The federal participation sought by these recommendations consists primarily of monies which have been drained from the Fund for the payment of "dual benefits" or which are owed to the Fund by Social Security, together with borrowing for unemployment insurance payments which, in principle, is the funding source for virtually all unemployment insurance payments in the country today.

The provisions of H.R. 1646 would increase taxes on employers, employees and, for the first time would place a tax on Tier II benefits. Each of the amounts realized from these taxes would be placed in the Retirement Trust Fund.

The employers would be taxed an additional 1% on July 1, 1984; a further 1% on July 1, 1985; and, if necessary, a final 1.5% on July 1, 1986. These tax increases on employers could reach 3.5% of taxable payroll in addition to the present 11.75% of taxable payroll. Both the employers and employees continue to pay the Tier I tax which is equivalent to the Social Security Tax and which continues to increase.

The employees' tax increases under H.R. 1646 would be .75% on July 1, 1984; .75% on July 1, 1985; and, if necessary, .75% on July 1, 1986. This is an increase to 4.25% of taxable payroll and, as I stated a moment ago, is in addition to the Tier I tax that is equivalent to the tax paid under Social Security.

The revenues from the new tax on Tier II would be placed in the Trust Fund. Incidentally, both H.R. 1646 and Director

Stockman agree on the revenues from this tax being placed in the Railroad Retirement Trust Fund Account.

According to the CBO Report the total revenues realized from the taxes between 1983 and 1988 would be $1.13 billion from the tax on employers; $758 million from the tax on employees; and, $647 million from the tax on benefits. This is a total of $2.535 billion to be added to the Trust Fund Account.

These taxes considered together with benefit cuts which will amoount to $2.271 billion by 1988, total $4.806 billion and come to within $334 million of equalling the amount of $5.14 billion which would have to be expended from the Retirement Trust Fund Account by 1988 if there were no cuts in benefits as now planned pursuant to Section 22.

More importantly, the trend line estabished between 1983 and 1988 strongly indicates that following 1988 the Fund will begin to show a surplus if H.R. 1646 is enacted.

An element of the Government's participation in H.R. 1646 involves the termination of the railroad unemployment insurance account's borrowing authority from the Railroad Retirement Account and the authorization of such borrowing from the Federal unemployment account in the Unemployment Trust Fund. The Labor-Management agreement originally would have authorized borrowing from the General Treasury but H.R. 1646, as drafted, limits this borrowing to the Federal Unemployment Account. There is also provision for a return to the Retirement Trust Fund of some $650 million borrowed by the Railroad Unemployment Insurance Account to pay unemployment benefits expended mostly since July 1981, the beginning of the 25% plunge in railroad employment.

While the railroad unemployment insurance system has performed very satisfactorily for many years, the recent depression in the rail industry has exposed weaknesses in the system. Among the weaknesses is the heavy drain it places on the retirement system at the same time that system is suffering from a shrinking revenue base.

The representatives of Labor and Management recognize that the railroad unemployment insurance system represents a serious and vexing problem that must be addressed and resolved and they have agreed to do so. It was not addressed during the negotiations on the railroad retirement modifications simply because there was insufficient time to devote to that very complex matter and also reach a reasonable solution to the railroad retirement emergency. The parties did agree to commence working on that problem as soon as the retirement problem was resolved.

The uniformity of railroad unemployment insurance throughout each of the states of this nation and the disparity between that system and state unemployment compensation generally in terms of qualifications for payments, amounts of payments, terms of payments, as well as the differences between the railroad unemployment compensation system and the unemployment compensation systems of each of the forty-eight contiguous states, render a fair and equitable resolution of the problem extremely difficult. This problem cannot be solved quickly and fairly. If the solution is to be fair it will take time, great care and greater effort. We believe it can be accomplished and we are willing to cooperate with the Committees of the Congress, the Office of Management and Budget and the Management of the industry in seeking that solution.

There can be no argument, however, that the paramount, immediate problem confronting us is the collapse of the railroad retirement system. That problem must be solved first. We are convinced that H.R. 1646 solves that problem at least until 1992 and very probably well into the 21st Century.

Thank you.

Chairman PICKLE. I believe we will ask Mr. Dempsey to go ahead now and present your testimony.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND CHARLES HOPKINS, CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

Mr. DEMPSEY. Thank you, Mr. Chairman. As you know, my association, the Association of American Railroads, represents the industry in a variety of ways, including legislation, and Mr. Hopkins, of the National Railway Conference, is the bargaining arm of the industry, and as you have indicated in your introductory remarks, because of the uniqueness of the railroad retirement system and at the direction of the Congress, particularly over the last 10 years, these matters have been treated as legislative matters upon a foundation of collective bargaining.

I indicated I wanted to make a few preliminary comments, but Mr. Berge has touched on everything that I had in mind saying, and I know that Mr. Hopkins will cover every point that we have to make, so I turn to him to summarize our position.

Chairman PICKLE. Mr. Hopkins.

Mr. HOPKINS. I do not intend to read from or paraphrase the written statement. I will limit myself to addressing several of the key points that I think either have arisen already this morning or that need to arise in a fair consideration of this matter.

Chairman PICKLE. Your statement, you and Mr. Dempsey's statement will be included in the record. You may then comment on such points as you want to emphasize.

Mr. HOPKINS. Thank you, sir.

First I want to associate myself with Mr. Berge's remarks. The labor-management package so to speak that he has described is a responsible, carefully worked out accommodation of a number of competing interests. It is a balanced package, very finely tuned, and as is the way with such matters, it involves a large number of very important and very difficult concessions by the parties to those negotiations. That means therefore that it is a fragile package in that it needs to be enacted, adopted substantially intact. Otherwise there is great risk of it becoming unraveled.

Obviously if there were some significant piece that represents a concession on labor's part that disappeared or was replaced by something else, that would make it difficult for management to continue to support the very enormous tax increases that are represented by the package. Similarly, if there were some change in the revenue side or some change in an element that represented a concession by management, labor would be justified in taking another look, backing away from the package. So we would urge that it be adopted without significant change, and that is what H.R. 1646 substantially embodies.

This package as I will call it goes very far in terms of curtailing benefits and increasing the taxes both on the employers, the railroads, and on the employees. As Mr. Berge has pointed out, over the period ending in fiscal year 1988, the package represents in terms of benefit curtailments and tax increases almost $5 billion. If one gauges it over a 10-year period, it represents in excess of $9 billion in terms of benefit curtailments and tax increases.

Now, the question that has been given a great deal of attention by the Office of Management and Budget and in the discussions so far this morning has to do with RUIA, the Railroad Unemployment Insurance Act. We are here in response to a critical need to save the railroad retirement system. Now, we are here in response to the requirements of section 22 of the Railroad Retirement Act that was adopted in 1981 calling upon the parties or instructing the parties to come forward with a program to address any problems that there might be with railroad retirement. That is what we have done. Section 22 does not call for action with respect to RUIA. We are certainly amenable to treating RUIA problems such as they may appear and we are not before you rejecting out of hand the proposition advanced, that is we on the management side are not here rejecting out of hand the proposition advanced by the OMB.

We are saying that we have not had the opportunity, and we don't think time has permitted, or will permit, the opportunity to intelligently and thoroughly assess that proposal and determine its feasibility and determine a means of putting it into operation if it should be feasible.

If RUIA does require attention either in its present form, or if, indeed, it should prove meritorious to transition to the State plans, we are prepared to deal with that and address it, but we urge, very strenuously, that any consideration that is given to any problems there may be with RUIA, not be allowed to deflect or in any way delay the action that is so critical with respect to railroad retirement.

Let me pause on that point of the critical timeframe that we have to deal with. We don't have until October to address the railroad retirement problems. It is true that pursuant to section 22, if nothing is done on October 1, 1983, the Railroad Retirement Board will put into effect regulations that would cut tier II benefits some

40 percent, to be followed 1 year later by an additional 40 percent, for a total of 80 percent.

But, as to the timing, in order for the July 1983 effective dates that are contained in H.R. 1646, and in the labor-management package to be met, it is essential that legislation be passed sometime in this May period; otherwise, some very important features of that pact reached between labor and management, some important features of 1646, will be lost, one of the more permanent ones being the postponement of the cost-of-living adjustment that will otherwise be due or become paid in July, 1983.

We strongly urge that whatever action can be taken is taken with all of the expedition that is reasonably possible.

Chairman PICKLE. Mr. Hopkins, I know that we do have a time factor and no one can disagree with that. It is a critical one, but you have already agreed to an approach 2½ years ago, that we would bar additional funds, and if we have not cured our problem in the meantime, that we cut our benefits 40 percent. You agreed to that approach 2 years ago or more, so we have not, or the Congress has not, been asleep on this. This is something you asked for.

We recognize the time factor, but I don't want you to say that because of the time factor, we now must act within the next 30 days. We have had 2 or 3 years to think about the problem we have got to solve.

Mr. HOPKINS. I understand your point, sir, and it is a fair one. I would only make this comment that we did not agree to that section 22 provision. It was included in the bill as enacted, and I take no exception to it, but whether section 22 were there or not, the fact would still be that railroad retirement would need to be saved by the kind of corrective action called for in H.R. 1646, and in order to accomplish that, it needs to come into being in a very short period of time, or else key elements of it will be lost, and the savings generated by some of the proposed benefit changes will not come into being, and that just further worsens the problem that already exists.

It was mentioned earlier, or suggested earlier, that compared to other forms of transportation, there might be some advantage to railroads because of the railroad retirement system, or what is proposed for the railroad retirement system. The facts are quite the contrary.

I would not purport to speak about the actual cost of what any private pension system might be for another mode of transportation, but I can speak on the basis of general familiarity with private pension systems and the cost thereof, and I think I can say with confidence to your committees that the cost to the railroads of the railroad retirement system presently, without regard to the proposed tax increases that are embodied in H.R. 1646, is very, very much greater than is the experience of private employers with private pension plans.

We now pay, without regard to what is in H.R. 1646, we now pay 11.75 percent of the taxable payroll, and the employees pay 2 percent.

Now, under H.R. 1646, the railroads' tax can go up as much as 3½ percent in addition to the amount that is already being paid, and the employees' up to an additional 2¼ percent, so that we would be paying, the railroads, 15.25 percent of taxable payroll if this bill is enacted as we propose, and the employees, 4¼ percent.

Now, the fact is, that compared to anything one cares to look at, the costs of this program that are borne by the industry and its employees are enormous and vastly greater than that experienced by any private employer that I know of, whether in the transportation industry or elsewhere.

Another comment with respect to RUIA: I think from some of the comments that were made this morning, there may be some impression that the Railroad Unemployment Insurance Act represents some kind of a Government giveaway program. That certainly is not the case. That system has been supported from its inception and is supported now exclusively by a tax on the railroad industry, and there is no proposal before your committees, nor anything in H.R. 1646, that contemplates that there will be a grant or a gift from the Federal Government.

We are not here entreating you for some Government subsidy or payment in lieu of our own payment to support the unemployment system that now exists in the railroad industry.

If something needs to be done about it, and that may well be the case, we will certainly address it, but we just plead that any rearrangement or any kind of change that may be needed with respect to RUIA not absorb time and attention to the point that it interferes with the adoption in the next few weeks of the necessary legislation to save the railroad retirement system.

We will deal with RUIA on its own merits and in its own time. We have no intention of delaying that.

Mr. FRENZEL. Mr. Chairman, may I ask a question on that point?

Chairman PICKLE. Yes, sir, you may.

Mr. FRENZEL. The gentleman said the bill does not confer any benefit. It confers a borrowing capability without any apparent ability to repay and no mandate to pay interest. Now, if that is not some kind of a grant or a dole, I don't know what is. How would you describe it?

Mr. HOPKINS. I would not describe it as a grant or a dole, sir.

Mr. FRENZEL. You mean the $1.8 billion you have escrowed someplace, and you would like to pay us right back?

Mr. HOPKINS. This program has been in existence, I think, some 30 years, and there have been borrowings before as provided for in the act, and they have been repaid out of taxes on the railroad industry, on the railroad employers. Whatever borrowings there may be in the future from either the railroad retirement account, or from the General Treasury, we would expect to be repaid.

We are not here asking that $1.8 billion or any amount be forgiven.

Mr. FRENZEL. Now, wait a minute, though. Other employers are forced to pay interest through interest payments that the States have to pay to borrow money from the Federal Government. This bill gives you a free ride, and you are still telling us you are not getting anything out of it.

You are getting something out of it.

Mr. HOPKINS. Either you are mistaken, sir, or I have misunderstood what is in the legislation. Certainly so far as the labor-management package is concerned, we had no intention of providing for borrowing without interest accruing at the time it is repaid. The fact is, that under the State-Federal unemployment programs, there have been decades of interest-free loans. That was changed partially in recent legislation, but there are a whole host of subsidies in the Federal-State system. There has never been a subsidy to the railroad unemployment system.

Mr. FRENZEL. If it is so good, maybe you should be in it.

Mr. HOPKINS. Maybe we should. I said that before. It may well be the case. But we just don't think that very serious questions such as what kind of tax rate ought to be paid, should be ignored. There are just a whole host of questions that need to be satisfactorily answered, not just for our satisfaction, but I would think for the satisfaction of all of the constituencies that are vitally concerned in the State and Federal employment system.

Mr. FRENZEL. Mr. Chairman, we are being asked to proceed because it is terribly important to make a restriction on that.

In my judgment, we are talking billions in unemployment, and I think that is the reason we have both committees meeting, and, as I understand the COLA treatment, it is a $12 million item. Compared to the enormity of the unemployment question, it is a modest amount.

I certainly am not going to be in favor of charging ahead to save $12 million so we can blow $1.8 billion, without a chance of getting it repaid.

I thank the chairman for yielding.

Chairman PICKLE. Before I yield to other members, have you completed your testimony?

Mr. HOPKINS. No, sir, I have not.

Chairman PICKLE. Let me ask you to proceed, and then we will get to questions as quickly as we can.

Mr. HOPKINS. As to the $1.8 billion, I won't dwell on it any more except to say that we don't accept that figure. It is predicated on employment assumptions with which we do not agree. A very pessimistic employment assumption, I might add. We can deal with that in greater length if you wish, but I would just sum up this point on RUIA by repeating that we are not proposing by the labor-management package, or H.R. 1646, that there be any Government bailout or payout, or gift, either in terms of the principal or with respect to forgiven interest as to any loan that may now exist or may accrue in the future.

I'd like to turn for a few minutes to the opposition that H.R. 1646 has encountered. That is primarily opposition by the Office of Management and Budget. Perhaps opposition overstates the case because, in fact, Director Stockman has said as recently as the hearing that we had before the Senate Labor Committee on the subject, that time was of the essence.

He, just as we, urged that after whatever consideration that committee or other committees needed to give to the situation, action be taken forthwith in order that there could be legislation by sometime in May, because he recognized, as we do, how critical the timing is.

As to the principal points that are raised by the Office of Management and Budget, I would like to offer a few comments. Perhaps it is not in sequence, because Director Stockman is to testify later, but we have had the opportunity to look at his statement, and it is substantially what has been presented to other committees that have had prior hearings, and I would like to just put a few points in focus.

I think the main point that I would press is that in the OMB testimony, the labor-management package is criticized on the ground that it has too large a component of Federal-sector participation.

Now, I should add that the OMB and Mr. Stockman have said that the labor-management package, H.R. 1646, is not bad. He has not attacked any part of it that I can recall. What has been said is that it is a good package. The parties are to be commended for having gone as far as they have, but we need to go farther.

Now, that comes down entirely to the position that the OMB, takes with respect to the Federal budget. The OMB position is that in scoring against the Federal budget, there should be taken into account section 22 in the present law, which, if it became effective, would cut benefits 40 percent, and it is only against that measure that the argument that current law calls for benefit cuts of 40 percent, that it can be argued that the labor-management package represents any adverse effect on the Federal budget.

In fact, it decidedly improves the Federal budget inasmuch as it provides for very substantial benefit decreases and very substantial tax increases. And I should say that according to my understanding of the work that has been done in the House and Senate on the budget, in the case of both bodies, they have looked upon railroad retirement in terms of something along the line of H.R. 1646 going into effect and not along the lines of there being a 40 percent benefit cut.

So, they have measured not against current law, but against the realities of the situation. In fact, Mr. Stockman, himself, has said that neither he—nor so far as he knows, anyone—ever had the notion that benefits were going to be cut 40 percent. So, in our view, it is fictitious to say that is the benchmark against which any budget consideration is to be scored.

Now, with regard to the 56 percent in the OMB statement that is represented in this package by Federal participation, if one examines it, it simply won't withstand examination.

A large part of it is represented by borrowing against the financial interchange. The fact is that the financial interchange funds will be paid over no matter what happens; that is to say, if there is no legislation, that money will be paid over because it is owed to the railroad retirement system, and that is a part of present law.

So, there is no added Federal participation by allowing borrowing against that amount. In fact, borrowing is already allowed under present law. What H.R. 1646 would do is simply correct what was perhaps an error in the 1981 legislation, so that under H.R. 1646 the railroad retirement account would be enabled to borrow all of the money that is owed to it and not just part of the money that is owed to it. So one can exclude the financial interchange borrowing as representing any Federal contribution. It is not that at all.

And I would also add that the OMB proposal calls for the same kind of financial interchange borrowing as H.R. 1646. So, I think we can erase that element from those that are added up by OMB to amount to this so-called 56 percent.

We can also eliminate the borrowing by the unemployment, the RUIA account against the General Treasury. There, too, OMB makes the same kind of a proposal that there be borrowing from the General Treasury for the RUIA benefits.

Now, it is true—OMB goes on and proposes that we come under the State plans—but that is a different question which we say should be addressed in its own season, not in a way that will interfere with the prompt enactment of the necessary legislation to save the railroad retirement system.

So, therefore, we are really basically together with OMB on the financial interchange borrowing and the RUIA borrowing, so those elements can be eliminated from this fictional 56 percent, and if we do that, we find that what is left is Federal-sector participation at the absolute most of under 20 percent. Let's say 23 percent, using the OMB table on the subject, leaving the rest to the private sector, 77 percent.

I mention those figures because it is an interesting coincidence that OMB Director Stockman, has spoken in a very laudatory way, and justifiably so, as to the social security package that has recently been enacted, as representing private-sector contributions of 77 percent and Federal-sector contributions of 23 percent.

Using OMB's own figures, and using them in, I would say, a very charitable way, shows that under our package proposal, the private-sector participation would be 77 percent and the Federal sector's would be 23 percent, a combination that in another setting Director Stockman said was laudable.

But going beyond that, the residual that remains of this 56 percent, which really comes down to like 20 percent, is represented entirely by the amount of the windfall underfunding or the dual benefit underfunding that occurred in the years 1974 to 1981, money that by any reasonably objective assessment of the history of the matter makes clear is owed to the railroad retirement system.

So, it hardly is Federal-sector participation or contribution for the railroad retirement account to recover, to be made whole, of what was drained out of the pockets of career railroad employees in order to pay windfall beneficiaries for a period of service outside the railroad industry that is represented by those windfall benefits.

And I think the last point on that item of the windfall that is worthy of your consideration is the fact that again, on careful inspection, the OMB position concedes the merit of what we call the debt that is owed to the railroad retirement account because of the drainage out of the system to pay those dual benefits or windfall benefits.

What OMB has proposed, and as I read the statement that you will be receiving later today will be proposed here, is that for the future the windfall benefits will be established as an entitlement program which would not require the annual appropriations and that that entitlement program represents full payment of the windfall benefits in the future.

Well, obviously, if there is any justification for paying the full windfall benefits in the future, there is every justification for having paid them in the past, and even more justification for repaying them in the past because they were paid out of the railroad retirement account, which represents contributions by individual employees and by railroad employers.

So, I think it is correct to say that that money was taken out of the pockets of the railroads and paid to these windfall beneficiaries.

So, I say again that OMB has really conceded the point by recognizing that these windfall benefits should be paid in the future. If they should be paid in the future, surely there can be no more argument that they should have been paid in the past. And if that is so, then just as surely this approximate $2 billion has been unfairly withheld from the railroad retirement system and should be restored to it.

Now, just one last point with respect to the private sector contribution versus the Federal sector contribution.

The only way in which the Office of Management and Budget is able to emphasize, and I think it is fair to say exaggerate any Federal participation, which really comes down in a fair sense to nothing, but the way they have undertaken to do that is by looking at a very narrow focus of a 5-year period through fiscal 1988. If one looks at the larger scale, and that is what we, of course, were doing in trying to respond to the challenges confronting railroad retirement—we were not looking at 1, 2, or 3 years—we were looking at the long term.

If one just looks out 10 years, then the private-sector contribution to the solution of the railroad retirement problems just enormously outweighs any possible argument about contribution by the Federal sector, and if one does, as was done with social security, and looks at it over a 25-year period, or a 75-year period, then the additional private-sector contributions to retirement pale into almost total insignificance what small part anyone might argue is made over that longer period of time by the Federal sector.

So, this is, in all its essentials, a private-sector resolution to the railroad retirement problem, and we urge your very careful, and we hope, favorable consideration, to the package.

Thank you, sir.

[The prepared statement with appendix follows:]

JOINT STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND CHARLES I. HOPKINS, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

William H. Dempsey is, and since April 1, 1977 has been, the President of the Association of American Railroads. The Association represents almost all of the nation's railroads in a wide variety of matters, including legislative matters, that concern the railroad industry. Charles I. Hopkins, Jr., is the Chairman of the National Railway Labor Conference, succeeding Mr. Dempsey in that position on April 1, 1977. The Conference represents almost all of the nation's railroads in national collective bargaining with the unions representing their employees and in regard to other matters concerning labor-management relations in the railroad industry, including negotiations with the unions in regard to recommendations to the Congress upon proposed changes in the railroad retirement system. We are making this statement jointly, on behalf of member railroads, because of the critical importance to the railroad retirement system and thus to the railroad industry of the legislative proposals being considered by the Committee.

Our statement is being made in support of H.R. 1646 as reported by the House Committee on Energy and Commerce insofar as that bill would implement a railroad labor-management agreement upon joint recommendation to the Congress of a program intended to preserve the solvency of the railroad retirement system. We demonstrate that the labor-management program should achieve that objective, even on the basis of pessimistic assumptions as to the future course of the economy and of the railroad industry; and that it would do so in a manner that entails substantial sacrifices by the railroads, their active employees and beneficiaries and only such limited assistance from the federal Treasury as is justifiable even apart from the current financial problems of the railroad retirement system.

In testimony on March 1, 1983 before a subcommittee of the House Energy and Commerce Committee, the Honorable David A. Stockman, Director of the Office of Management and Budget, criticized the railroad labor-management program and suggested an alternative program on behalf of OMB. Generally similar testimony was submitted by Director Stockman to the Senate Committee on Labor and Human Resources, on April 19, 1983, and S. 1076, which was introduced by Senator Hatch on April 18, 1983, is intended to embody the OMB program. While this Joint Statement is directed towards explaining and supporting the railroad labor-management program and H.R. 1646, we have attached hereto a memorandum by the National Railway Labor Conference commenting upon the written statement submitted by Director Stockman on March 1, 1983 as revised to reflect the written statement he submitted on April 19, 1983 and the provisions of S. 1076. As is there demonstrated, the Director's testimony and OMB's program reflect misunderstandings of the railroad retirement system and of the financial crisis now facing that system and are otherwise unacceptable. We urge that the OMB program be rejected by these subcommittees and by the full Committee on Ways and Means as was done by the House Energy and Commerce Committee. See H. Rept. No. 98-30, Pt. I (1983), at 31-33.

A. Background Information

The railroad retirement system for some time has been plagued by a bulge in the number of beneficiaries as compared to the number of active employees whose compensation is the subject of railroad retirement taxes.

While the problems of the social security system have been attributable in large part to the decline in the ratio of active employees to beneficiaries (currently about three to one), the problem of the railroad retirement system in that regard is much more acute. The current ratio for the railroad retirement system is approximately one active worker for three beneficiaries, the reverse of the social security ratio. This has given rise to the possibility that the railroad retirement system might not have sufficient funds at times to pay full benefits, while the bulge in beneficiaries as compared to active employees is working its way through the system, even though the system is financially sound on a long-term actuarial basis.

The possibility that such a cash-balance shortage would actually occur within the relatively near future first became critical in 1981. The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) enacted amendments of the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.) and the Economic Recovery Tax Act of 1981 (P.L. 97-34) enacted amendments of the Railroad Retirement Tax Act (26 U.S.C. §§ 3201 et seq.) that, in tandem, were intended, among other things, to remedy that problem as it was then perceived to exist. Unfortunately, the actuarial projections made at the time concerning the anticipated effect of those 1981 amendments upon the Railroad Retirement Account have proven to be mistaken because of an unanticipated precipitous decrease in railroad employment -- from about 514,000 in July of 1981 to about 389,000 in January of 1983 -- as a result of the prolongation of the current recession. Among other things, this has drastically decreased the amounts of railroad retirement taxes received by the Railroad Retirement Account as those taxes are applicable to the compensation paid to active employees. Consequently, the Railroad Retirement Account as early as fiscal year 1984 may have insufficient funds to pay full benefits unless further corrective action is taken.

Such a possibility is provided for in a sense by one of the 1981 amendments that added a new § 22 to the Railroad Retirement Act of 1974. Under that provision, in the event of the occurrence of certain contingencies, the Railroad Retirement Board is to submit a report to the President and the Congress including a statement of "the amount, if any, of adjustments (stated in terms of percentage of taxable payroll), and any other changes such as cash flow adjustments, necessary to preserve the financial solvency of the Railroad Retirement Account, if such adjustments were effective at the beginning of the next succeeding fiscal year;" in the event of such a report, "representatives of railroad employees and carriers shall, jointly or separately," submit proposals "designed to preserve the financial solvency of the Railroad Retirement Account;" and the Board is to issue regulations under which Tier II benefits otherwise payable out of the Railroad Retirement Account would be reduced if necessary "because insufficient funds would preclude payment of full benefits for every month of" a fiscal year.

The Railroad Retirement Board, on February 18, 1983, submitted a Report under § 22 with respect to fiscal year 1984. Among other things, that Report indicates that the Tier II benefit reductions for fiscal 1984 in the absence of corrective action could be as much as 40%, and that if such corrective action were limited to tax increases an increase for fiscal 1974 as high as 12 percent of taxable payroll might be necessary. Even larger benefit reductions might be necessary in subsequent fiscal years. It seems obvious that either such consequence would be virtually intolerable and should be prevented, if possible, by corrective action preserving the financial solvency of the Railroad Retirement Account in a manner that, under the circumstances, would more equitably share the burden among the railroads and their existing employees, and the beneficiaries.

Railroad labor and management did not await the issuance of that Report or depend upon the timetable provided in § 22 for attempting to agree upon recommendations for legislative action that would preserve the financial solvency of the Railroad Retirement Account. Rather, at the urgent request of key congressional members and staff responsible for oversight of the railroad retirement system, the National Railway Labor Conference on behalf of its members and a committee of the Railway Labor Executives' Association on behalf of the standard national railway labor unions negotiated for some time in an effort to agree upon such recommendations. They reached and initialed an agreement on February 17, 1983, some aspects of which were revised shortly thereafter. Both Railroad Retirement Board actuaries and independent actuaries have analyzed the effect of that agreement upon the financial status of the railroad retirement system. Those actuaries have concluded that, if statutory amendments based upon those joint recommendations are enacted, the system should be saved from insolvency at least through the next decade and probably indefinitely, even assuming an unanticipated continuance of the precipitous decline in railroad employment.

H.R. 1646, which was drafted by the staff of the Railroad Retirement Board with the assistance of congressional staff, basically is intended to enact the amendments of the Railroad Retirement Act of 1974 and the Railroad Retirement Tax Act that are necessary to effectuate the joint recommendations agreed upon by railroad management and labor. We note that it contains one aspect which was not included in that agreement and upon which we take no position: provisions (26 U.S.C. § 3221(a)(4) if amended as provided in Sec. 202 of H.R. 1646) under which the Tier II tax rate imposed upon any commuter authority operating commuter service under Title V of the Rail Passenger Service Act, if any portion of that service was transferred from Conrail on January 1, 1983, would be 5.25 percentage points less than the Tier II tax rate imposed on other employers.

In addition, the bill does not reflect a precautionary aspect of the agreement to make changes in the railroad retirement statutes where necessary to conform to future changes in the social security statutes. When H.R. 1646 was introduced and when reported by the House Energy and Commerce Committee the Social Security Amendments of 1983 had not yet been enacted. Now that that legislation has been enacted, it is being analyzed and considered to determine what further amendments of the railroad retirement statutes may be necessary or appropriate in view of the changes that have been made in the social security statutes. Such features as the increases after 1999 in the normal retirement age (Sec. 201) and the adjustments in the method of accounting for unnegotiated benefit checks (Sec. 152) might well be recommended for inclusion in H.R. 1646, but as noted we will not be in a position to present joint labor-management recommendations in this regard until our analysis and consideration of the Social Security Amendments of 1983 has been completed.

We also had some problems with the language of some aspects of H.R. 1646 as introduced in that it did not fully reflect some of the joint recommendations agreed upon or was otherwise technically deficient. Revisions adopted by the House Energy and Commerce Committee cleared up most of those problems, except with respect to the taxing aspects of the bill that did not come within that Committee's jurisdiction. We expect to continue our efforts, including consultation with Board and congressional staff members, to clear up any remaining problems in that regard. We shall not attempt in this Statement to go into the technical details, which we believe can be worked out in time to be included in the legislation, but we shall point out some aspects of H.R. 1646 as reported by the House Committee which appear clearly to depart from significant aspects of the agreed recommendations.

Before discussing the provisions of the bill in more detail, we emphasize that the joint recommendations agreed to by railroad management and labor constitute a carefully balanced and finely tuned program that depends for its success upon its enactment in its entirety without significant change of any component. As is true of labor-management negotiations generally, each side made concessions in return for concessions by the other, and the entire agreement constitutes a package which would be destroyed if significant changes are made. Thus, we urge your support of legislation that would enact all aspects of the joint recommendations into law. If that is done, the financial solvency of the railroad retirement system should be preserved for the foreseeable future.

Under those joint recommendations, some part will be played by each of the four distinct constituencies involved in the railroad retirement system: (1) railroad employers, (2) railroad employees, (3) beneficiaries and (4) the government. The principal burden will be shared by railroad employers and employees through substantial increases in the already burdensome railroad retirement taxes, but substantial savings will be engendered through reductions in the benefits that otherwise would be payable. The government's participation would be limited to making more effectual the existing provision under which the Railroad Retirement Account can borrow from the General Treasury amounts owing under the financial interchange with the social security system, in transferring the existing borrowing authority of the Railroad Unemployment Insurance Account from the Railroad Retirement Account to the General Treasury (which has long been the source of borrowing for purposes of the federal-state unemployment compensation systems), and to making good on a commitment made in 1974 under which the costs of phasing out excess or windfall dual benefits would be funded out of the General Treasury.

We discuss first the increased taxes that would be imposed on the railroad employers and employees, then the benefit adjustments, and then the government's role. Finally, the bill contains several technical amendments intended for the most part to clear up possible ambiguities in the existing provisions of the Railroad Retirement Act arising out of 1981 amendments, and which should not have any significant impact on the financial status of the system. We will briefly refer to those technical amendments after our discussion of the other provisions.

B. Railroad Retirement Tax Increases

Under Title II of the bill, the most substantial share of the burden of preserving the financial solvency of the railroad retirement system will be placed upon the railroads and their active employees through large increases in railroad retirement taxes, and the bulk of those increases will be imposed upon the railroads. The Tier II employer tax rate, which is now 11.75% of taxable payroll, will be increased by 1% on July 1, 1984, by an additional 1% on July 1, 1985, and if necessary for years after 1985 by a further 1.5% for 12-month periods commencing July 1. The Tier II tax rate imposed on active employees, which is now 2% of taxable compensation, will increase by 0.75% on July 1, 1984, by another 0.75% on July 1, 1985, and may be increased by a further 0.75% on the same "if necessary" basis in years after 1985.

Those Tier II taxes are or will be imposed on top of Tier I railroad retirement taxes which for both employers and employees are automatically equivalent to social security taxes: i.e., at present, 6.7% of taxable compensation as to both employers and employees. In addition, railroad employers pay a supplemental tax -- geared to the cost of certain supplemental benefits -- that presently is 18.5 cents for each employee hour for which compensation is paid. In short, the Tier II tax rate on the railroads certainly will increase by 2% to 13.75% of taxable payroll, and may increase by a total of 3.5% to 15.25% of taxable payroll apart from the supplemental tax. If all the Tier II tax increases are effectuated, the total railroad retirement tax on employers -- including the Tier I tax and the supplemental tax -- will amount to about 24.85% of Tier II taxable payroll. The Tier II tax rate on employees certainly will increase by 1.5% and may increase by a total of 2.25%, to 4.25% of taxable compensation, on top of a Tier I tax rate of 6.7% for a possible total of 11.95% of Tier II taxable compensation. Taken together, the total tax rate on both employers and employees could amount to 36.8% of Tier II taxable compensation. Moreover, without any further amendment of the Railroad Retirement Tax Act, those totals for both employers and employees automatically will further increase in accordance with future increases in the social security tax rates including the acceleration in the statutory schedule for such increases which was enacted by the Social Security Amendments of 1983 (Sec. 123).

These truly are frightening figures. In agreeing to recommend such tax increases, the railroads have stretched themselves to the limit, and we do not see how anyone can doubt that they will have done their share towards preserving the financial integrity of the railroad retirement system. It is critical, under these circumstances, that the third "if necessary" tax increase be imposed only if really necessary to provide reasonable assurance that the funds in the Railroad Retirement Account will be adequate to pay full benefits, as is intended by our agreement with the unions. It is for this reason that we are especially troubled by the "trigger" proposed in Sec. 204 of H.R. 1646 for determining whether the "if necessary" tax increase should be imposed or, if already imposed, should cease to be imposed.

As we understand it, that trigger would have little relationship to the actual needs of the Railroad Retirement Account for additional employment tax revenues. For example, the "if necessary" tax would have to be imposed (or continued), regardless of other circumstances, if the "tier II benefit deficit" for a calendar year is greater by any amount than that for the prior calendar year. As defined in the bill, a "tier II benefit deficit" exists if Tier II benefits paid in a calendar year exceed Tier II taxes for that year. For this purpose, therefore, the appropriations made to the Railroad Retirement Account because of benefit amounts (including Tier II amounts) attributable to military service, interest earned and the funds received under the financial interchange with the social security system, each of which is provided for by existing law, would be ignored. This would also be true of funds that would be paid into the Account if other features of the bill are enacted such as the revenues resulting from subjecting benefits to income taxes and the funds necessary to make up for the shortfall in appropriations to pay the costs of phasing out windfall benefits prior to October 1, 1981.

In short, for these and other reasons, we fear that the proposed trigger could have the effect of imposing the "if necessary" tax increase regardless of actual need. Moreover, if the Railroad Retirement Account ever should become so well funded as to trigger out that tax increase, even a relatively insignificant decline in employment or other minor vagary affecting either the total of Tier II taxes received or of Tier II benefits paid in a calendar year could result in a "tier II benefit deficit" for that year slightly greater than that for the prior year. The "if necessary" tax would be reimposed in that event even though the ability of the Railroad Retirement Account to pay full benefits would not have been affected in any realistic sense. Indeed, because of increased revenues from sources other than Tier II taxes, the Account might well have a larger balance than in the prior calendar year.

The Chief Actuary of the Railroad Retirement Board, at the request of the labor member of the Board, has devised an alternative trigger which he believes would be appropriate for purposes of the "if necessary" tax increase. Under the Chief Actuary's proposal, in general, the ratio of the fund balance on the last day of a fiscal year (September 30) to the total benefits paid out during that fiscal year would be compared to that ratio as computed for the prior fiscal year. If the ratio for the current fiscal year is both larger than the ratio for the prior fiscal year and at least 50%, the "if needed" tax increase would not be imposed on the following July 1 or, if already in effect, would be rescinded as of that date. If one or both of those conditions is not satisfied, the "if necessary" tax increase would either be imposed or continued in effect. The trigger would be recomputed as of the end of each fiscal year. Some refinements are being discussed with the Chief Actuary, among others, but railroad labor and management have agreed in principle upon his proposal as we believe that it can provide the basis for devising a realistic trigger.

We note that even the two mandatory tax increases may be more in fact than is needed to pay full benefits as they would be adjusted by the bill. If the economy should rapidly improve as we all hope and many believe will happen, with consequent substantial increases in railroad traffic and employment, that fact alone should dramatically improve the financial condition of the railroad retirement system. But labor and management have attempted in their joint recommendations to design a program which would preserve the financial solvency of the system even if the current unprecedently low levels of railroad employment should persist or even decline further, as no one can be certain about future economic developments.

C. Adjustments in Railroad Retirement Benefits

The benefit-adjustment provisions are contained in Title I of the bill. While the joint labor-management program would not reduce the amount of benefits now being paid to existing beneficiaries, current annuitants as well as those retiring in the future will make substantial contributions towards preserving the financial solvency of the railroad retirement system. This should become apparent as we briefly describe those features of the bill. Moreover, a provision in Title II of the bill, which we also describe, while not in itself reducing benefits will have a similar effect by subjecting those benefits to federal income taxes in a manner similar to or greater than what has been enacted in regard to the social security system and to Tier I of railroad retirement by the Social Security Amendments of 1983.

Early Retirement. Section 101 of the bill would amend provisions of the Railroad Retirement Act of 1974 under which an employee with 30 or more years of service, and the spouse of such an employee, may retire at age 60 and receive a full benefit without any reduction for early retirement. Those 60/30 early retirement provisions do not have a counterpart in the

Social Security Act, which generally permits retirement only after attaining age 62 and reduces the benefits payable in the event of retirement before attaining age 65. They have proven to be very costly to the Railroad Retirement Account, particularly since that Account is not recompensed under the financial interchange with the social security system for that portion of railroad retirement benefits otherwise equivalent to social security benefits (Tier I benefits) to the extent payable at a time when they would not be payable by social security or in a greater amount than would be payable by social security.

In general, under the joint labor-management program, the Tier I component of the annuity paid to such 60/30 retirees prior to attaining age 62 would be a flat rate based upon social security age reduction factors and, upon attaining age 62, would be the amount that would be paid under social security after allowing for age reductions if they had retired thereunder upon attaining age 62. This will result in substantial savings to the Railroad Retirement Account.

Cost-of-living adjustments. Among other things, the Social Security Amendments of 1983 enacted a 6-month postponement of the July 1983 social security COLA to January 1984, stipulated that subsequent such adjustments be made effective in January of each year (Sec. 111), and provided for use of a wage rather than a cost-of-living index in some circumstances (Sec. 112). Such adjustments in benefits under the Social Security Act automatically are applicable to Tier I railroad retirement benefits, including any changes that occur in the manner of making or in the timing of such adjustments by reason of amendments of the Social Security

Act. However, cost-of-living adjustments in Tier II railroad retirement benefits are governed by provisions of the 1974 Act which do not automatically reflect changes that may be made in the manner or timing of such adjustments under the Social Security Act.

The joint labor-management program includes an amendment of the 1974 Act under which the timing of Tier II COLAs also would automatically conform with the timing of COLAs under the Social Security Act as would the index used, although the Tier II COLA increases would continue to be limited to 32.5% of the percentage increase in that index. Thus, the Tier II as well as the Tier I COLAs would be conformed to changes made in the social-security COLAs by the Social Security Amendments of 1983, which would result in savings to the Railroad Retirement Account. That portion of Sec. 102(a) of the bill that would redesignate § 3(g) of the 1974 Act as § 3(g)(1) also amends that provision so as to carry out this aspect of the joint recommendations, effective upon enactment of the bill.

Offset for cost-of-living adjustments. The remainder of Sec. 102 of the bill relates to another aspect of the joint labor-management program under which the first five points of COLA increases in Tier I benefits after enactment of the bill would be offset by comparable dollar reductions in Tier II benefits, but there would be no further offsets once the 5% limit is reached. For example, if the first such COLA percentage increase was 3%, the dollar amount of that increase would be fully offset, as would be the dollar amount of the next 2% of increases, but if the first COLA increase was more than 5% only the dollar amount equivalent to the first 5% of that increase would be offset. This would apply to all existing beneficiaries at the time. Moreover, subsequent spouse and survivor retirees, while not directly subject to an offset, would have the amount of their Tier II benefit reduced if the Tier II benefit of the employee to whom married or related was the subject of such an offset. These changes will result in substantial savings to the Railroad Retirement Account.

Waiting period for disability benefits. The 1974 Act provides disability benefits under § 2(a)(1)(iv) and (v) for employees who qualify therefor and under § 2(d)(1)(i) for an employee's widow who qualifies therefor. Unlike the Social Security Act, the 1974 Act does not now include a requirement that an individual cannot qualify for a disability benefit until after a "period of five consecutive months . . . throughout which the individual . . . has been under a disability" (see 42 U.S.C. § 423(c)(2)). The joint labor-management program includes a recommendation to conform the 1974 Act to the Social Security Act in this regard, so as to impose a similar five-months waiting period before an employee or widow can qualify for a disability benefit otherwise payable. Section 103 of H.R. 1646 is intended in part to implement that recommendation, although we still have some problems with the manner in which that would be done. This joint recommendation also will result in some savings to the Railroad Retirement Account, which will be enhanced by the fact that the Tier I portion of disability benefits is not recompensed under the financial interchange insofar as the 1974 Act does not now require the five-months waiting period which is required by the Social Security Act.

Annuity beginning dates. Section 103 of the bill primarily relates to another aspect of the joint labor-management recommendations under which the beginning dates for railroad retirement annuities would be conformed to the beginning dates for social security annuities. When the 1974 Act was enacted, both that Act and the Social Security Act generally provided that annuities could be awarded retroactively for up to 12 months prior to the date on which an application for such an annuity was filed. Amendments to the Social Security Act in 1977, 1980 and 1981, however, either eliminated or substantially shortened that retroactive period. Those amendments automatically carried through insofar as Tier I railroad retirement benefits are concerned, as they are not payable except as they would be payable under social security, but the Tier II component of railroad retirement benefits continues to be governed by the provisions of § 5(a) which permit a longer retroactive period. The joint recommendation that the § 5(a) beginning dates be conformed with social security, therefore, would both ease the administrative burden upon the Railroad Retirement Board (as all components of railroad retirement annuities would commence at the same time) and result in some savings to the Railroad Retirement Account. We have some problems with the language of the bill in this regard as well, but they are under discussion and we expect them to be satisfactorily resolved.

Subjecting benefits to federal income taxes. Section 14 of the 1974 Act now excludes all railroad retirement benefits, except supplemental benefits, from "any tax . . . ." While social security benefits similarly were excluded from taxation, the National Commission on Social Security Reform recommended that in certain circumstances such benefits be subjected to federal income taxes, with the resulting tax revenues being paid into the social security trust funds. Moreover, while § 14 was not changed, the

Congress when it restructured the railroad retirement system in enacting the 1974 Act, generally recognized that Tier II is a "company pension program administered for historical reasons, by the Federal Government," so that "[f]uture changes in Tier II benefits will arise out of collective bargaining between the railroads and the unions." H. Rept. No. 93-1345 and S. Rept. No. 93-1163 (1974), at 16-17. Hence, the joint labor-management program includes a recommendation that those Tier I railroad retirement benefits equivalent to social security benefits be subjected to federal income taxes to the extent that social security benefits are so taxed, and that all other railroad retirement benefits be subjected to federal income taxes as if they were benefits paid by a private pension plan, with the resulting tax revenues being paid into the Railroad Retirement Account.

This is the purpose of Sec. 205 in Title II of H.R. 1646, which anticipated and thus generally takes into account the provision in the Social Security Amendments of 1983 (Sec. 121) subjecting Tier I railroad retirement benefits as well as social security benefits to federal income taxes in specified circumstances, with the proceeds resulting from that tax as applied to the Tier I benefits being paid into the Railroad Retirement Account. Some revisions are needed in the language of Sec. 205 either to correct technical errors or to fully conform to the labor-management agreement, such as changing the effective date of the tax on Tier II benefits to July 1, 1983 from January 1, 1984 as is provided in Sec. 206(c) of the bill, but we see no reason why they cannot be worked out with the staffs of the tax committees of the Congress.

D. Federal Assistance

The circumstances in which the General Treasury would be called upon to assist in meeting the financial crisis facing the Railroad Retirement Account are both limited in nature and, we believe, would be justifiable even in the absence of that crisis.

Borrowing by the Railroad Retirement Account. Section 15(b) of the 1974 Act as amended in 1981 authorizes the Railroad Retirement Account to borrow from the General Treasury amounts needed for the payment of benefits, subject to a limitation that the total amount of such borrowings "outstanding . . . at any time during any fiscal year shall not exceed the total amount of money" estimated to be payable to the Railroad Retirement Account by the social security trust funds "with respect to such fiscal year," and such borrowings are to be repaid with interest not "later than 10 days after a transfer to the Railroad Retirement Account" pursuant to the financial interchange. In accordance with a joint labor-management recommendation, Sec. 301 of the bill would restructure that borrowing authority so that monthly advances would be made by the General Treasury to the Railroad Retirement Account, measured by the monthly amounts owing to the Railroad Retirement Account under the financial interchange, and the outstanding advances would continue to be repaid with interest upon receipt by the Railroad Retirement Account from the social security trust funds of the amounts owed under the financial interchange.

The need for such borrowing authority fundamentally arises because the social security system does not pay the amounts owing to the railroad retirement system under the financial interchange on a current basis, but rather after an average delay of about 15 months. The interchange is accomplished on a fiscal year basis, but the determination of the net amount to be transferred need not be made, under § 7(c)(2) of the 1974 Act, until "June 15 following the close of the fiscal year." While that delay does not affect the long-term financial condition of the Railroad Retirement Account, as interest is paid, the delay in payment (and the distortion caused by payment for an entire fiscal year at one time in June of the following fiscal year) has exacerbated the Account's cash-flow problems that give rise to the danger that funds will be insufficient in some months to pay full benefits.

The 1981 amendment attempted to meet that problem, but it contains an ambiguity or inconsistency which has undermined its effectiveness. While the limit on total borrowings for a fiscal year is the amount estimated to be transferred under the financial interchange "with respect to that fiscal year," repayment of outstanding borrowings is required not less than 10 days after a transfer under the financial interchange, although in fact such a transfer is of the amounts owing for the prior fiscal year rather than for the current fiscal year. We understand that, as those conflicting provisions have been construed and applied, the Railroad Retirement Account has not been able to borrow against amounts currently owing under the financial interchange for periods of up to several months. Moreover, the existing restriction upon the borrowing authority to times when the balance in the Railroad Retirement Account "is insufficient to pay annuity amounts due to be paid during the following month" is not compatible with aspects of the legislation now being considered, and particularly in devising a trigger for the "if necessary" increase in railroad retirement taxes.

We emphasize that this proposed amendment would simply permit the Railroad Retirement Account to borrow on a current basis what is in effect its own money and the General Treasury would be fully secured against loss by the requirement that interest be paid and that outstanding borrowings with accumulated interest be repaid after receipt by the Railroad Retirement Account of amounts owed to it under the financial interchange. Thus, while this proposal will contribute to easing the short-term financial problems of the Railroad Retirement Account, it will do so without any true cost to the General Treasury or anyone else. Surely, that is not too much to ask under the circumstances.

Borrowing by the Railroad Unemployment Insurance Account. The railroad unemployment insurance system is the only exclusively federal system for the payment of unemployment compensation benefits to former employees of a private industry. Unemployment compensation for persons who worked in other industries is provided by State systems that, in general, have been established under the aegis of federal legislation and contain an intermixture of federal and state elements. The railroad industry was taken out from under that general federal-state system in 1938 by the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351 et seq.). That was not done because of some intent to depart from the purposes of the existing federal-state system, but because experience had demonstrated that the application of that system to the railroad industry "results in needless inequalities and inequities to the employers and employees," particularly since "a large proportion of railroad workers perform their services in more than one State and find it extremely difficult to adjust their rights under the somewhat varied State plans." H. Rept. No. 2668 and S. Rept. No. 2614, 75th Cong., 2d Sess. (1938), at 2.

The Railroad Unemployment Insurance Account is funded by the contributions of railroad employers subject to the RUIA. Under § 8 of the Act, those contributions or taxes for a calendar year are fixed by the Railroad Retirement Board at one of various levels ranging from 0.5% to 8% of taxable compensation, depending upon the balance in the Account as of the September 30 preceding the calendar year. That rate now is and for some time has been fixed at the maximum 8%, but the decline in railroad employment due to the current recession has both increased the unemployment benefits payable and decreased the revenues of the Account from such contributions. As a result, the Account cannot pay full benefits unless the deficiency in available funds is made up by borrowing.

Such contingencies were anticipated and provided for, in a manner that would avoid temporary distortions in the contribution rate, by a 1959 amendment (73 Stat. 32) to § 10(d) of the RUIA. Under that provision, the Railroad Unemployment Insurance Account may borrow from the Railroad Retirement Account the amounts necessary for payment of benefits under the RUIA, which amounts subsequently are repaid to the Railroad Retirement Account with interest. While at the time the "committee [was] unanimously of the opinion that . . . no amendments to the law should be made which would jeopardize the financial soundness of the railroad retirement system," which "principle [was] accepted by all the standard railroad labor organizations and by railroad management as well," no such jeopardy from the borrowing authority thus provided was foreseen at the time. H. Rept. No. 243, 86th Cong., 1st Sess. (1959) at 10. On the other hand, depressed economic conditions had reduced the balance in the Railroad Unemployment Insurance Account to "such a low point that even a minor dislocation in the railroad industry could cause unemployment to use up the available funds" so that "borrowing authority is needed to prevent collapse of the program if this should occur." Id. at 13.

For many years, that borrowing authority achieved its purpose without jeopardizing the financial soundness of the railroad retirement system, as the cash balance in the Railroad Retirement Account was more than sufficient to permit such borrowing while paying full retirement benefits, and the borrowings were repaid with interest when that became possible. But that no longer is true insofar as the cash balance of the Railroad Retirement Account is concerned. The outstanding borrowings from that Account by the Railroad Unemployment Insurance Account now amount to about $474 million, which is a substantial contributing factor to the declining balance of the Railroad Retirement Account that threatens, unless corrected, the full payment of railroad retirement benefits. And, further borrowings almost certainly will be needed unless the recession ends more quickly than is now anticipated.

It is for this reason that the joint labor-management program includes a recommendation to substitute the General Treasury for the Railroad Retirement Account as the source of the borrowing authority (in regard both to the outstanding amounts now owed and to future borrowing) of the

Railroad Unemployment Insurance Account. Section 302 of H.R. 1646 is intended to carry out that joint recommendation, but as drafted it would substitute the Federal Unemployment Account -- rather than the General Treasury -- as the source of the borrowing. While we have no objection to that approach if it should be preferred by the Congress, it was not intended by our agreement and could be thought to be inappropriate in that the Federal Unemployment Account is an instrumentality of the federal-state system. See 42 U.S.C. § 1104(g). Moreover, as drafted, Sec. 302 of H.R. 1646 could affect the current obligation of the Railroad Unemployment Insurance Account to repay its borrowings with interest. If transferred as proposed therein to the Federal Unemployment Account, the borrowings would be "subject to the same conditions (other than the conditions regarding repayment)" as if made by a State under the federal/state system, and would be "repayable (including interest at the rate payable for advances to accounts of States under section 1201 of the Social Security Act [42 U.S.C. § 1321]) in the manner provided herein;" that is, upon request by the Railroad Retirement Board when funds are available in the Railroad Unemployment Insurance Account for that purpose.*/

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*/ While borrowings from the Railroad Retirement Account similarly are repayable under request of the Board when funds for that purpose are available in the Railroad Unemployment Insurance Account, under § 10(d) of the RUIA they are repaid with "interest at a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of one per centum" (45 U.S.C. § 360(d)). On the other hand, advances by the General Treasury to the Federal Unemployment Account for use in carrying out its purposes are repayable "without interest" (42 U.S.C. § 1323). Advances from the Federal Unemployment Account to the States for use in paying unemployment benefits were repayable without interest until a 1981 amendment under which interest generally became payable, as determined by a formula subject to a 10% ceil-
(Continued)

Whether or not that might be justified at some other time, it is not the intention of railroad management and labor in this legislation -- which basically is concerned with the railroad retirement system -- to reduce or otherwise affect the obligation of the Railroad Unemployment Insurance Account to pay interest upon borrowed amounts. Our only intention is to relieve the Railroad Retirement Account of the burden of being the source of that borrowing authority, in view of its critical financial condition, and it seems to us that the General Treasury is the most appropriate source co be substituted, subject to the provisions for repayment with interest that are now contained in the RUIA in regard to borrowings from the Railroad Retirement Account.

There is a precedent for this approach under the RUIA itself. When the railroad unemployment compensation system was created, there was no reserve for the payment of benefits (which commenced immediately) while contributions were accumulating. The Congress, therefore, provided for repayable advances of up to $25 million out of the General Treasury to the Railroad Unemployment Insurance Account for use in paying benefits. 52 Stat. 1104; see H. Rept. No. 2668 and S. Rept. No. 2164, _supra_ at 9. The general federal-state system provides a more sweeping precedent that

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ing, in regard to "advances made on or after April 1, 1982, and before January 1, 1988" (42 U.S.C. § 1322). The Social Security Amendments of 1983 (Sec. 511) eliminated that January 1, 1988 expiration date on the interest requirement, but liberalized provisions for deferring payment of interest which in some circumstances cannot exceed 9%. The basic formula for determining the interest payable by a State under 42 U.S.C. § 1322 depends upon factors that would not be applicable to the Railroad Unemployment Insurance Account, and it could be difficult to determine how the provisions deferring payment of interest and establishing a ceiling thereon would apply to that Account if its borrowings are generally made subject thereto as is proposed in Sec. 302 of H.R. 1646.

continues to this day. As summarized in the Conference Report on the Omnibus Budget Reconciliation Act of 1981:

> "Under present law, the costs of regular State benefits and one-half the costs of extended benefits are funded by State unemployment payroll taxes. If State unemployment tax revenues exceed benefit costs, the surplus amounts are retained by the State in an interest bearing account in the Federal Unemployment Trust Fund. If the benefit costs exceed revenues, States draw down their accumulated surpluses from prior years. If those surpluses become depleted, States are allowed to receive interest-free Federal advances from an account [the Federal Unemployment Account] which is funded through the Federal unemployment payroll tax (FUTA). If there are insufficient Federal unemployment tax revenues for this purpose, additional funds are obtained as interest-free advances from the general fund of the Treasury."

H. Rept. No. 97-208 (1981), Bk. 2, at 996. The Omnibus Act changed that picture by an amendment which imposed the requirement, referred to in the footnote on page 24 above, that the States pay interest to the Federal Unemployment Account on advances made between April of 1982 and the end of 1987. But the General Treasury remains the ultimate source of borrowing authority in the general federal-state system, when tax or contribution revenues are insufficient to pay full benefits, through interest-free repayable advances to the Federal Unemployment Account. We understand that those advances have amounted and now amount to many billions of dollars.

Moreover, under the Federal-State Extended Unemployment Compensation Act of 1970, under which extended benefits of up to 13 weeks are payable after the basic 26-weeks benefit period is exhausted in periods of high unemployment, the Federal Government pays outright one-half of the cost of those extended benefits through transfers to the States from the Extended Unemployment Compensation Account (see 42 U.S.C. § 1105(c)). While that

Account is funded out of the federal share of FUTA tax revenues (see 42 U.S.C. §§ 1101(b)(1), 1105(b)), any deficiencies are made up through "repayable advances (without interest)" from the General Treasury (see 42 U.S.C. § 1105(d)). And, in 1982 (as it has done on a number of prior occasions in periods of high unemployment) the Congress established a temporary program for paying benefits for a further extended period. The Federal Supplemental Compensation Act of 1982, enacted as Title VI of P.L. 97-248 and amended by § 544 of P.L. 97-427, afforded an additional 8 to 16 weeks of extended benefits paid out of advances from the General Treasury to the Extended Unemployment Compensation Account which "shall not be required to be repaid" (§ 604(b)). The Social Security Amendments of 1983 extended that temporary program through September 30, 1983 (Sec. 501) and, in addition to a basic extended benefit period of from 8 to 14 weeks, authorizes from 6 to 10 weeks of benefits to individuals who exhausted their extended benefits otherwise provided prior to April 1, 1983 (Sec. 502).

None of those extended benefit programs apply (or did apply) to the railroad unemployment compensation system. Rather, the Congress has amended the RUIA to provide for the payment of extended benefits to unemployed railroad workers, the full costs of which have been paid out of the Railroad Unemployment Insurance Account (and thus out of employer contributions to that Account) without any assistance from the General Treasury. A 1959 amendment (73 Stat. 30) provides for extended benefits, of up to 13 weeks after the basic 26-weeks period is exhausted for individuals with between 10 and 15 years of railroad employment and of up to 26 weeks for individuals with 15 or more years of railroad employment, at all times (rather than only in periods of high unemployment). A 1975 amendment (89 Stat. 461) provides up to 13 weeks of extended benefits to individuals with less than 10 years of railroad service, during periods of high unemployment. That amendment generally was patterned after the 1970 Federal-State Act, including an adaptation to the railroad industry of the "trigger" for determining the existence of a period of high unemployment. See H. Rept. No. 94-384 (1975) at 13. However, the full costs of those extended benefits under the RUIA are paid out of the Railroad Unemployment Insurance Account without any assistance from the General Treasury. Sec. 102 of P.L. 98-8 recently amended the RUIA to provide up to 50 days of supplemental extended benefits for employees with less than 10 years of railroad service, generally during the period after March 9 and before July 1, 1983, which are paid for out of non-repayable appropriations from the general fund. Subject to that limited exception, both basic and extended benefits are being paid by the railroad unemployment insurance account without any assistance from the General Treasury.

It seems plain, therefore, that the separate existence of the railroad unemployment insurance system has resulted in large savings to the General Treasury over the years since 1938, and that the proposed amendment is very modest. It would simply transfer from the Railroad Retirement Account to the General Treasury the borrowing authority of the Railroad Unemployment Insurance Account, thus providing a borrowing authority similar to that which long has been available to the States under the general system. Interest would be paid on the advances until repaid, which generally was not required of the States prior to 1982. The full costs of extended benefits (as well as of basic benefits) would continue to be paid out of the Railroad Unemployment Insurance Account and thus eventually out of railroad contributions, even though in other industries up to one-half or more of the costs of extended benefits have been funded by appropriations from the General Treasury either directly or as interest-free repayable advances.

Finally, the proposed amendment would assist in relieving the temporary cash-flow crisis facing the Railroad Retirement Account. At most, it would provide the railroad retirement and unemployment insurance systems with only a modicum of the relief that is more than overdue in view of the savings to the General Treasury and the general taxpayer that has resulted from the establishment of the railroad unemployment insurance system separate and apart from the general federal-state system applicable to all other industries.

Windfall appropriations. The Railroad Retirement Act of 1974 restructured the railroad retirement system so as to avoid future accruals of excess or "windfall" dual benefits by individuals who qualify for benefits under both the railroad retirement and social security systems. While those excess dual benefits resulted from nonrailroad employment and the nature of the social security benefit formula, their entire costs were borne by the railroad retirement system through the workings of the financial interchange with social security. By 1974, the Railroad Retirement Account already had been drained of "in excess of $4 billion" by payment of those costs, which were the primary reason for the actuarial deficit (7.72% of the 9.05% of taxable payroll) which then threatened the system with bankruptcy. See H. Rept. No. 93-1345 and S. Rept. No. 93-1163 (1974), at 1-2, 7-8.

The Congress agreed with the Commission on Railroad Retirement (established in 1970 by 84 Stat. 792) that those windfall benefits were inequitable as well as costly, and the Congress also agreed "that any plan to eliminate these dual benefits should include protection of the equities of existing beneficiaries and employees with claims upon such benefits." _Id_. at 11. In general, therefore, under the 1974 Act existing retirees as of the January 1, 1975 effective date continue to receive any windfall amount to which entitled as of that date, and unretired employees who by that date (or by the end of the year in which they left railroad service, if earlier) had sufficient railroad and non-railroad service to qualify for benefits under both systems receive upon retirement a windfall amount based upon such pre-1975 service. See _id_. at 11-13.

This gave rise to the question of who should pay the costs of phasing out those preserved windfall benefits. "It would be unfair to the railroad industry to saddle the carriers" with those costs as they "had no part in the creation of the current situation." _Id_. at 4. The excess benefits were attributable to "non-railroad employment . . . which has not benefitted the railroad industry in any fashion" and to the social-security benefit formula "over which the railroad industry has no control," and the "railroads [had] consistently opposed" prior legislation repealing "restrictions" on such benefits. _Ibid_. Moreover, payment of those costs through the imposition of additional taxes upon the carriers would be "more inflationary in its effects than the provisions of the bill as reported."

Id. at 6. So, too, "it would be unfair to impose additional taxes upon current and future employees" since they "will not (except where vested rights are involved) be permitted to receive" such benefits (H. Rept. No. 93-1345 at 4), and "more than half of the long range cost of putting the overall system in actuarial balance under this bill is accomplished through significant reductions in benefits payable to future retirees" (S. Rept. No. 93-1163 at 4).

The solution which the Congress adopted almost unanimously was to pay those phasing-out costs through appropriations from the General Treasury. The problem had been exacerbated by "Congressional action (1) liberalizing benefit eligibility under the Social Security system and (2) repealing restrictions upon dual benefits contained in the Railroad Retirement Act," and a "precedent exists for this approach" in legislation authorizing appropriations to pay the costs of crediting military service under the social security and railroad retirement systems. H. Rept. No. 93-1345 and S. Rept. No. 93-1163 at 4-5.*/ Thus, § 15(d) of the 1974 Act authorized appropriations from the General Treasury to the Railroad Retirement Account "for each fiscal year, beginning with the fiscal year ending June 30, 1976, such sums as the [Railroad Retirement] Board determines to be necessary on a level basis to pay before the end of fiscal year 2000" the total costs of the preserved windfall dual benefits (including loss of interest, as reduced by increased interest earned by the Railroad Retirement Account resulting from a change in investment policy enacted by § 15(e) of the 1974 Act).

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*/ Dual benefit restrictions imposed by 1946 and 1951 amendments were repealed by 1954, 1955 and 1965 amendments. Both labor and management vigorously opposed the first such repeal. The railroads also opposed the subsequent repeals, while union support generally was grounded upon the precedent established by the first such repeal. See Proposed Changes in the Railroad Retirement System, 1974, Background Material, Etc. (Senate Committee Print 1974), at 28-31.

The method thus established for paying the costs of phasing out windfall benefits was found to have two serious defects which contributed substantially to cash-flow problems encountered by the Railroad Retirement Account. While the appropriations were authorized to be made on a level basis over a 25-year period, because of the larger number of beneficiaries in earlier as compared to later years, even the full amount of the authorized appropriations would have been insufficient in those early years, and in fact the Congress failed to appropriate the full amount authorized. This resulted in a severe drain upon the balance in the Railroad Retirement Account. That problem was remedied as to the future by 1981 amendments to §§ 7(c) and 15(d) of the 1974 Act (effective October 1, 1981), which established a separate Dual Benefits Payments Account and limited the total amount of windfall benefits payable during a fiscal year to the amount appropriated to that account out of the General Treasury for that fiscal year.

The 1981 legislation did not, however, remedy the problem for the Railroad Retirement Account caused by the fact that prior appropriations had been insufficient to pay the full costs of windfall benefits paid out of that Account prior to October 1, 1981. That shortfall in appropriations, including loss of the interest that would have been earned by the Account, now amounts to some $1.7 billion. Section 401(a)(4) of the bill, in accordance with the agreement by railroad labor and management, would make up for that shortfall in prior appropriations by three advances from the General Treasury to the Railroad Retirement Account (which would not be repaid until money is appropriated for that purpose, as would be authorized): on July 1, 1984, on July 1, 1985 and on the first July 1 after 1985 on which the "if necessary" tax increase discussed above is imposed. Each installment would be one-third of the amount necessary as of July 1, 1984 to place the Railroad Retirement Account in the position that it would have been in if the full costs of windfall benefits from January 1, 1975 through September 30, 1981 had been paid out of appropriations from the General Treasury, except that the last two installments shall also include additional amounts to cover loss of interest by the Railroad Retirement Account after July 1, 1984.

The railroads and unions initially had agreed to recommend appropriation of the full amount of the shortfall, as of October 1, 1983, but reluctantly agreed to the approach contained in the bill at the urging of congressional staff. But certainly the full amount of that shortfall should be made up.

All the reasons that led the Congress to conclude, almost unanimously, in 1974 that the costs of paying preserved windfall benefits should be funded through appropriations from the General Treasury support enactment of this proposal, which in effect would simply fulfill the commitment then made by the Congress to the railroad industry and railroad retirement beneficiaries. It is still true that it would be unfair to impose any of those costs upon the railroads, who were not benefitted in any fashion by the non-railroad employment that gave rise to windfall benefits, or upon existing railroad employees who for the most part will not be entitled to even a preserved windfall benefit upon retirement. It is still true that the windfall benefit problem was created by legislation, adopted in large measure over the opposition of the railroads, and the shortfall since 1974 has resulted from the failure to appropriate the full amount necessary to fund the preserved windfall benefits paid out of the Railroad Retirement Account in the 1975-1981 period.

Moreover, as the congressional committees noted in reporting the bill enacted as the 1974 Act, the Railroad Retirement Account -- and thus the railroad industry -- already had absorbed a loss of more than $4 billion in the payment of windfall benefits. That loss has not been recompensed through appropriations from the General Treasury or otherwise, and would not be recompensed under the proposed legislation. It would be grossly inequitable to penalize even further the railroad industry by failing to carry out fully the promise made by the Congress in enacting the 1974 Act that the full cost of paying the windfall benefits preserved by that Act would be funded from the General Treasury. In addition, the transfer as provided in the bill of funds sufficient to cover the shortfall would be a tremendous aid towards overcoming the cash-flow crisis facing the Railroad Retirement Account without the necessity of either unbearable increases in railroad retirement taxes or harsh reductions in railroad retirement benefits.

E. Technical Amendments

The railroad-union agreement includes a number of technical amendments to the 1974 Act which are recommended to the Congress in order to clarify or conform various provisions of that Act in the light of the amendments that were made in 1981. While Title IV of the bill also relates to other matters, it includes most of the agreed-upon technical amendments, but Secs. 104 and 105 in Title I also relate to technical amendments.

Sec. 104. The Omnibus Budget Reconciliation Act of 1981 amended the Social Security Act so as to restrict the payment of benefits to children of a deceased employee attending an educational institution to those children under age 19 receiving an elementary or secondary education, thus in effect eliminating the payment of such benefits to children up to age 22 receiving a college or other postsecondary school education. Those amendments automatically are applicable to the Tier I component of railroad retirement benefits payable to such students, as they are payable only to the extent payable by social security, and also apply to the Tier II component insofar as based upon a percentage of Tier I. However, under a 1981 amendment to § 4(g) of the 1974 Act, the Tier II component may be based upon a percentage of the deceased employee's Tier II benefit and that will be true in regard to all awards made on or after October 1, 1986. This technical amendment would fully conform the 1974 Act to the restrictions thus made upon the payment of student benefits under the Social Security Act.

Sec. 105. This provision of H.R. 1646 as introduced would have repealed § 22 of the 1974 Act which was added in 1981 by the Omnibus Budget Reconciliation Act, contrary to the intent of one of the technical amendments agreed to by railroad labor and management. That mistake was corrected in the bill as reported by the House Energy and Commerce

Committee. As so revised, this provision in effect would eliminate the benefit-reducing features of § 22 while retaining those features under which the Railroad Retirement Board would be required to provide advance notice to the Congress of any projected deficits and railroad labor and management would be required, in that event, to submit proposals to the Congress for preserving the solvency of the Railroad Retirement Account. The procedure which would thus be provided is similar to that provided by the Social Security Amendments of 1983 (Sec. 143) under which, in the event of a projected adverse balance ratio in a social security trust fund, the Board of Trustees is to promptly advise the Congress and submit proposals for corrective action. We believe that the joint labor-management program, if enacted, will obviate any future need for § 22, and certainly no one can hope more fervently than the railroads that that will be so. But since neither the railroads nor anyone else can be absolutely certain about the future, it seems preferable to the railroads and unions to retain § 22 as so revised in the Act.

Sec. 401(a)(1) - (3). We have noted that, by reason of 1981 amendments, windfall benefits are payable out of a separate Dual Benefits Payments Account and that the total of such payments for a fiscal year are limited to the total amount appropriated to the Account for that fiscal year. Since appropriations for a fiscal year sometimes are not made until after it commences, the amended § 15(d) authorizes the Dual Account to borrow from the Railroad Retirement Account one-twelfth of the amount estimated to be appropriated, to be repaid with interest when the appropriation is made and received. The technical amendment to which those provisions of the bill are directed is intended to afford more flexibility in the amount that can be borrowed, but to continue to assure repayment with interest once the appropriation to the Dual Account for the fiscal year is received.

Sec. 402. A 1981 amendment to the Railroad Retirement Tax Act included within taxable compensation voluntary payment by an employer, without deduction from the employees' wages, of the tax imposed upon employees by that Act. This provision is intended to implement a joint recommendation that such payments also be made creditable compensation under the 1974 Act and the RUIA. Both under the 1981 amendment and the proposed amendments, the maximum on monthly taxable or creditable compensation would apply so that any actual effect would depend upon such compensation otherwise being less than that maximum.

Sec. 403. A 1981 amendment to the Regional Rail Reorganization Act (by the Omnibus Budget Reconciliation Act) made certain employee protection benefits thereunder creditable compensation for purposes of the 1974 Act and for purposes of "base year" compensation under the RUIA. This technical amendment would make clear that the benefits to be so treated under the 1974 Act and the RUIA are limited to separation and subsistence allowances, and they would be treated as "compensation" for purposes of those Acts in the month in which paid, in accordance with the manner in which other compensation generally has been treated.

Sec. 404. A 1981 amendment to the 1974 Act established, in § 3(b), a new formula for computing Tier II benefits payable to retired employees. Because of certain problems involved in the application of that formula to individuals who left railroad employment to accept employment with federal governmental agencies that perform functions exclusively or primarily related to the railroad industry, a special formula was provided in the amended § 3(b) in regard to those persons. However, the intent of that special formula has largely been frustrated by the so-called "family maximum" upon railroad retirement benefits in § 3(f)(1) of the 1974 Act. This proposed amendment is intended, therefore, to amend § 3(f)(1) in a manner that conforms with the intent of the 1981 amendment to § 3(b) in regard to those individuals covered by the special formula provided therein.

Secs. 405 and 407-409. Prior to the 1981 amendments, the 1974 Act did not provide any benefit for divorced wives, surviving divorced wives or remarried widows of employees, although social security would have provided those individuals with a benefit if applicable to railroad employment. The 1981 amendments in this regard were intended to provide such individuals with a Tier I railroad retirement benefit in an amount which they would have received if railroad employment were covered by social security, as offset by any amounts actually received from social security, so that they would be in the same position that they would have been in in that eventuality. No Tier II railroad retirement benefit is payable to such individuals.

In accordance with that general intent, Sec. 405 of the bill would make clear that the benefit payable to a divorced wife is to be taken into account for purposes of the "social security minimum" provided by § 3(f)(3) of the 1974 Act; Sec. 407 would make clear that the benefit payable to a remarried widow is to be reduced by benefits actually paid to her by social security; Sec. 408 would make clear that a divorced wife is one of the survivors who, if entitled to a survivor benefit, establishes that a lump-sum benefit is not payable under § 6(b)(1) of the 1974 Act upon the death of an employee; and Sec. 409 would make clear that when, as a result of a divorce, the basis for the Tier I spouse benefit payable is shifted from that of a spouse to that of a divorced wife, any reductions in the amount of that benefit for early retirement will continue to apply after the divorce, as is true under social security.

Sec. 406. This technical amendment would revise § 4(g)(4) of the 1974 Act as amended in 1981 to make clear that the so-called "spouse minimum" under which the annuity of a widow generally cannot be less than the annuity to which she was entitled as a spouse, includes any spouse windfall benefit.

None of these technical amendments should have any significant effect upon the financial condition of the Railroad Retirement Account. They either confirm interpretations of the 1981 amendments already being applied by the Board or conform the 1974 Act in ways intended to effectuate more fully the intent of those amendments.

Secs. 410 and 411. These provisions were added to H.R. 1646 by the House Committée on Energy and Commerce and are not part of the railroad labor-management program. We do not have any position in regard to Sec. 410 which relates to commuter railroads. Sec. 411 statedly is intended to conform the 1974 Act with a 1981 amendment to the Railroad Retirement Tax Act subjecting certain sickness benefits to Tier I railroad retirement taxes. See H. Rept. No. 98-30 at 59. We do not object to that being done, but the language of the provision is not limited in form to such sickness benefits and thus appears to us to be too broad.

F. Conclusion

The joint railroad labor-management program for preserving the financial solvency of the railroad retirement system should achieve that objective, if enacted by the Congress intact, in the absence of an economic catastrophe. The railroads agreed to that program with great reluctance because it would substantially increase an employment tax burden that already is much higher than the burden imposed on employers in other industries. But the railroads have agreed because they have concluded that the program, under the circumstances, represents a fair and equitable sharing by all concerned of the burden of meeting the financial crisis facing the Railroad Retirement Account. We urge your support for the enactment of legislation that will implement that program without significant change.

May 3, 1983

APPENDIX

COMMENTS BY THE NATIONAL RAILWAY LABOR CONFERENCE UPON THE TESTIMONY OF DAVID A. STOCKMAN, DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, ON THE RAILROAD RETIREMENT SOLVENCY ACT OF 1983

These comments are directed to the written statement ("Statement") submitted by the Honorable David A. Stockman, on behalf of the Office of Management and Budget ("OMB"), during the hearings held on March 1, 1983 before the Subcommittee on Commerce, Transportation and Tourism of the House Energy and Commerce Committee.*/ Those hearings were devoted to H.R. 1646 which proposes to enact amendments of the Railroad Retirement Act of 1974 and of the Railroad Retirement Tax Act by a statute that would be denominated the Railroad Retirement Solvency Act of 1983. That legislation is intended to amend the railroad retirement statutes in accordance with a program to preserve the financial solvency of the railroad retirement system that has been jointly recommended to the Congress by railroad labor and management. See H. Rept. No. 98-30 at 14.

A bulge in the number of beneficiaries as compared to active employees (currently about 3 beneficiaries to 1 employee, the reverse of the social security ratio), which is expected to peak in the 1980s, has given rise to dangers that the railroad retirement system would not have sufficient funds to pay full benefits on a short-term basis even though the system is financially sound on a long-term actuarial basis. It was believed by all concerned that 1981 amendments to the railroad retirement statutes had prevented such an occurrence, but no one anticipated the precipitous decline in railroad employment -- from about 514,000 in July of 1981 to about 389,000 in January of 1983 -- which resulted from the current recession. The Railroad Retirement Board has advised the Congress that, unless corrective legislation is enacted, Tier II railroad retirement benefits (those over and above what social security would pay) must be reduced by 40% on that date and by 80% on October 1, 1984, pursuant to § 22 of the 1974 Act as amended in 1981.

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*/ That Statement is reproduced as Appendix V to H. Rept. No. 98-30, Pt. 1 (1983), at 155-166. A similar statement, except for a revision of one of OMB's proposals, was submitted on April 19, 1983 to the Senate Committee on Labor and Human Resources. Also, on April 18, 1983, a bill embodying the OMB program (S. 1076) was introduced by Senator Hatch. These comments have been revised to reflect any significant differences in the Senate Statement from the March 1, 1983 Statement, and the provisions of S. 1076.

The joint labor-management program was agreed to, after intensive negotiations between the National Railway Labor Conference on behalf of management and a committee of the Railway Labor Executives' Association on behalf of labor, in anticipation of such a report and in accordance with § 22 which requires labor and management, either jointly or separately, to submit "proposals designed to preserve the financial solvency of the Railroad Retirement Account" in the event that the Board reports that benefit reductions otherwise will be imposed. That program is explained in detail in the Joint Statement of William H. Dempsey, President of the Association of American Railroads, and Charles I. Hopkins, Jr., Chairman of the National Railway Labor Conference ("Joint Statement"), which will be submitted to the Social Security and the Public Assistance and Unemployment Compensation subcommittees of the House Ways and Means

Committees.[*/]

When the Congress reconstructed the railroad retirement system in 1974, it basically was divided into two segments: Tier I, which is generally equivalent to social security in regard to both taxes and benefits, and Tier II which imposes taxes and pays benefits in excess of social security. The financial crisis now facing the railroad retirement system, and the threatened 40% reduction in benefits, relates to Tier II only. The Congress recognized in 1974 that Tier II is a "company pension program administered for historical reasons, by the Federal Government," so that future changes should "arise out of collective bargaining between the railroads and the unions." H. Rept. No. 93-1345 and S. Rept. No. 93-1163 (1974), at 16-17. Moreover, as Director Stockman recognized (Statement at 1) the railroad retirement system, including its financial solvency, "is of vital importance to 1 million former rail workers, their families and survivors . . . , and to the 388,000 active rail employees." Surely, the joint recommendations of the railway labor unions which represent the interest of those active and retired railroad employees, and of the railroads for whom they work or did work, is entitled to be given great weight by the Congress. That is particularly true since the Chief Actuary of the Railroad Retirement Board, among others, has concluded that the joint labor-management program -- if enacted without significant change -- will save the railroad retirement system from insolvency at least through the next decade and probably indefinitely, even assuming an

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[*/] A similar Joint Statement was submitted to the House Energy and Commerce subcommittee on March 1, 1983, and to the Senate Labor and Human Resources Committee on April 19, 1983.

unanticipated continuance of the precipitous decline in railroad employment.

As is true of labor-management negotiations generally, each side made concessions in return for concessions by the other, and the entire agreement constitutes a package which would be destroyed unless enacted without significant change. The joint labor-management program is a finely balanced and carefully tuned combination of railroad retirement tax increases upon both the ralroads and their employees, benefit adjustments and limited federal assistance. All affected constituencies -- employers, employees, beneficiaries and the government -- would do their part in a manner that, under the circumstances, is both fair and equitable. In short, railroad labor and management firmly believe that their program will provide the "sound, enduring, and evenhanded solutions" that the Director (Statement at 1) says are necessary.

Unfortunately, the testimony by Director Stockman and the proposals which he submitted on behalf of OMB could severely distort the joint labor-management program in a manner that is completely unacceptable to both railroad management and railroad labor. His testimony and proposals reflect a misapprehension both of the nature of the railroad retirement system and of the financial crisis now facing that system. Rather than being evenhanded, the program proposed by OMB would virtually obliterate any federal role in meeting that crisis, could further reduce Tier II benefits, and would impose staggering railroad retirement tax increases upon a railroad industry that already is in dire financial straits. And, for good measure, the OMB proposals would destroy the separate railroad unemployment compensation system by legislative fiat, placing the railroads and their employees under the general federal-state system, but at the same time require the railroads for an indefinite period of some years both to continue paying the contributions or taxes they now pay to the railroad system and to pay those that would be imposed upon them by the federal-state systems. Even apart from that unfairness, by tying the complex and controversial unemployment compensation issue to the consideration of legislation that now is addressed exclusively to the problems of the railroad retirement system, OMB's program almost certainly would delay any legislative solution of the financial crisis facing that system well beyond October 1, 1983. On that date, Tier II benefits of "1 million former rail workers, their families and survivors" will be reduced by 40% if corrective legislation has not been enacted.

We analyze Director Stockman's testimony and the OMB program in more detail below. We shall first discuss certain major themes emphasized by the Director, then the OMB program, and finally certain other of the statements made by Director Stockman.

A. Major Themes of the Stockman Testimony

1. Effect on the Budget Deficit. One of the criteria asserted by the Director (Statement at 18) for an acceptable solution is that it "must not add to the Federal deficit" as "[a]ny real solution, by definition, would not add significantly to the long-term Federal deficit . . . ." While such a criterion may be natural and appropriate from the viewpoint of OMB, and the federal deficit is a matter of concern to the railroad industry as well as to many others, it is not appropriate in our

opinion to increase railroad retirement taxes for purposes of reducing the overall federal deficit rather than for purposes of preserving the financial solvency of the railroad retirement system. If tax increases are to be utilized for purposes of reducing the deficit, surely that should be done on a more general basis rather than through increases in specialized employment taxes such as the social security and railroad retirement taxes.

But however that may be, the joint labor-management program would not add to the federal budget deficit in any realistic sense. Rather, while intended primarily to preserve the financial solvency of the railroad retirement system, that program includes large increases in railroad retirement taxes and reductions in railroad retirement benefits that will result in substantial reductions in the federal deficit if compared to the retirement taxes now imposed and the retirement benefits now payable. A report on H.R. 1646 by the Congressional Budget Office ("CBO Report"), transmitted on March 9, 1983 to Chairman Dingell of the House Energy and Commerce Committee, indicates that on the basis of these assumptions the reduction in the federal budget deficit for fiscal years 1983-1988 will amount to some $4.806 billion.*/ See Table 2 on page 3. The House Energy and Commerce Committee concluded that the bill will result in "a deficit reduction of $9.002 billion over the ten year period [1983-1992], or almost one billion dollars a year."

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*/ The CBO Report is reproduced in H. Rept. No. 98-30 at 34-42. See, also, *id.* at 43-44.

Any suggestion by Director Stockman to the contrary is based on a budget assumption by OMB that Tier II benefits will be reduced 40% under § 22 of the 1974 Act as of October 1, 1983, and even more substantially in later fiscal years. See Table 2 on page 6 of his Statement. Even on that assumption, the CBO Report (Table 2, page 3) indicates that the budget deficit for fiscal years 1983-1988 would be increased by only some $334 million, which hardly could be deemed "significant" in the context of the overall federal budget deficit for those years. Moreover, an implicit premise of the Director's Statement, and one we understood him to make explicit in his oral testimony, is that the Congress should not permit such drastic reductions in railroad retirement benefits under § 22, but rather should enact corrective legislation before they otherwise would occur.

Indeed, that is the premise underlying § 22. In the event of a report by the Railroad Retirement Board projecting that the railroad retirement account will have insufficient funds to pay full benefits throughout a future fiscal year, § 22 expressly requires representatives of railroad management and labor to "jointly, or separately, submit . . . proposals designed to preserve the financial solvency of the Railroad Retirement Account," and the President also is to "submit such recommendations as he may deem appropriate" in that regard. Benefits will be reduced under § 22 only if the Congress, after receiving and considering such proposals or recommendations, does not enact corrective legislation such as H.R. 1646. See the Conference Report on the 1981 amendments, H. Rept. No. 97-208 (1981), Bk. 2, at 868-869, which pointed out that, among other things, "the traditional role of rail labor and management in developing proposals will be respected," and that the Congress could act even in "the event that a satisfactory agreement to restore financial balance in the Railroad Retirement Account cannot be reached . . . ."

Hence, the assumption by OMB for budget purposes that railroad retirement benefits will be drastically reduced under § 22, commencing October 1, 1983, is a self-inflicted wound that is not called for by § 22 and clearly does not provide a realistic basis for assessing the effect of the joint labor-management program upon the budget deficit. If realistically assessed, enactment of that program would substantially reduce the federal deficit, and the budget deficit would not be significantly increased even if compared to OMB's unrealistic assumption of large benefit reductions under § 22.

2. Relationship to the Railroad Unemployment Insurance System. While the railroad unemployment insurance system like the railroad retirement system involves the railroads and their employees and is administered by the Railroad Retirement Board, it is a separate system governed by a separate statute (the Railroad Unemployment Insurance Act, 45 U.S.C. §§ 351 *et seq.*) which has purposes unrelated to those of the railroad retirement system. Section 22 of the Railroad Retirement Act of 1974 commanded railroad management and labor, in the event of a projected deficiency in the railroad retirement account, to submit to the Congress "proposals designed to preserve the financial solvency of the Railroad Retirement Account" — not of the railroad unemployment insurance account, and that is what the joint labor-management program is intended to do.

The only linkage to the railroad unemployment insurance system is a proposal to transfer the source of that system's present borrowing authority from the railroad retirement account to the Treasury, without affecting the extent of that borrowing authority or the existing obligation of the railroad unemployment insurance account to repay any borrowings with interest, since it obviously does not make sense for the railroad retirement account to be loaning money at a time when it is threatened with a cash shortage. The financial situation of the railroad unemployment insurance system would neither be bettered nor worsened, and that system would not be affected in any other way, since that is not the purpose of the legislation now before the Congress. See Joint Statement at 21-29.

Nonetheless, Director Stockman and OMB propose to complicate this railroad retirement legislation by including provisions that would terminate the railroad unemployment insurance system; place the railroads and their employees under the general federal-state unemployment compensation systems for tax purposes as of January 1, 1984, but not for benefit purposes until July 1, 1985; require the railroads to pay unemployment compensation taxes or contributions to both systems during that 18-months transition period, and also for some additional years until the amounts borrowed by the railroad unemployment compensation system (which borrowings would be assumed by the federal unemployment account) have been repaid with interest; and continue the railroad system in existence indefinitely insofar as it pays sickness benefits. See Statement at 8, 12-15, 22.

Whatever may be the merits of that proposal in the abstract, it is almost certain to be very controversial. In our view, the financial condition of the railroad unemployment insurance system is not as bleak as it has been painted by Director Stockman (see Statement at 12-15), but it undoubtedly has been hard hit by the increased railroad unemployment attributable to the current recession. But, his proposal would transfer those problems to the States and to industries that now participate in the general federal-state systems. We understood him to concede during his oral testimony both that this might well engender opposition from State Governors and that no effort had been made to obtain their agreement. Moreover, even if all could agree in principle to such a proposal, working out the legislative details could hardly be done without lengthy and extensive consideration. The railroad unemployment insurance system has been in existence for some 45 years, since 1938, and many vested interests have grown up around it. As a practical matter, such an engrained system cannot be wiped out overnight, and any legislation transferring the responsibility for railroad unemployment compensation to the federal-state systems necessarily must be complex so as properly to adjust the interests of all concerned. Yet, OMB did not propose legislative language to implement this radical proposal until April 18, 1983, and that language gives rise to many problems.

Sec. 204 of S. 1076 is intended to implement this OMB proposal. Sec. 204(b) would repeal 26 U.S.C. § 3306(c)(9), which excludes service covered by the RUIA from the employment covered by the Federal Unemployment Tax Act ("FUTA"), effective January 1, 1984, thus subjecting the railroads to the FUTA tax after that date; and Sec. 204(a) would condition certification of State unemployment compensation laws, effective January 1, 1984, upon provisions subjecting the railroads to State contributions or taxes commencing on that date and entitling railroad employees to State unemployment benefits commencing July 1, 1985. Under Sec. 203(c), unemloyment benefits would not be payable under the RUIA "after an employee became covered for entitlement of payment of unemployment compensation under a State law."[*] There is no provision which would reduce the contribution rates that may be imposed upon the railroads under § 8 of the RUIA, or which would terminate the payment of sickness benefits under the RUIA. Indeed, while the outstanding advances made by the railroad retirement account to the railroad unemployment account outstanding on January 1, 1984 would be assumed by the federal unemployment account (Sec. 203(d)(2)(B) and (3)), and further advances could be made from the federal unemployment account to the railroad retirement account "during the period beginning January 1, 1984 and ending July 1, 1985" (Sec. 204(d)(1) and (2)(A)), those advances would be repayable with "interest at the rate payable for advances to accounts of States under section 1201 of the Social Security Act" (Sec. 204(d)(3) and (4)),[*/] and if the outstanding balance as of June 30, 1987 "is not less than the outstanding balance on June 30, 1985," the contribution rate payable by the railroads under the RUIA "shall be increased by four percentage points until the entire remaining outstanding balance has been repaid" (Sec. 204(e)).

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[*] While we presume that it is not intended that unemployment benefits be payable to anyone under the RUIA on or after July 1, 1985, that is not clear from the quoted language which could be read as meaning that unemployment benefits otherwise payable thereunder would continue to be payable if for some reason the employee did not satisfy a requirement for the payment of benefits under the applicable State law (which requirements vary as among the several States). A further indication of the hasty and defective draftsmanship of Sec. 204 is that it would not repeal the provisions in § 13(a) of the RUIA prohibiting application of State unemployment compensation laws to the railroads and their employees "after June 30, 1939" (45 U.S.C. § 363(a)), and indeed would leave on the books all of the provisions of the RUIA including those exclusively related to unemployment compensation."

Thus, the railroads would pay unemployment taxes or contributions to both the railroad system and the federal/state system for some years to come, not only during the 18-months transition period but indefinitely thereafter until the borrowings of the railroad system have been repaid with interest, and they could be saddled with an arbitrary 4-point increase in the contribution rate otherwise applicable under the RUIA. That double taxation not only would be grossly unfair, but would place an intolerable burden upon the railroad industry, particularly in the context of the additional railroad retirement taxes proposed by OMB over and above the very heavy taxes already paid and the substantial increase included in the joint labor-management program. Moreover, with regard both to the transfer of the railroads and their employees from the

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[*/] The provisions regarding repayment with interest of advances made to the State from the federal unemployment account pursuant to § 1201 of the Social Security Act are contained in § 1202 of that Act. Under § 1202 as amended by Sec. 511 of the Social Security Amendments of 1983, the interest rate payable by the State may vary in accordance with factors or circumstances that are not readily applicable to the railroad unemploymen insurance account, and which otherwise appear to be inappropriate for application to that account. 42 U.S.C. § 1322.

federal/state system to a separate railroad system by the RUIA and to previous expansions of coverage of the federal/state system, the same effective date applied to coverage for both contribution or tax purposes and benefit purposes.[*/]

Although OMB would require the railroads to pay RUIA unemployment contributions until the outstanding borrowings by the railroad unemployment insurance account are repaid with interest, commencing January 1, 1984 the railroads also would be subject to FUTA and State taxes or contributions intended in part to pay prior borrowings by the State systems. The FUTA tax rate is 3.5% until "the first calendar year after

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[*/] Under the RUIA, benefits were made payable for days of unemployment "after June 30, 1939" (52 Stat. 1096) and contributions were payable "with respect to employment after June 30, 1939" (52 Stat. 1102); and application of the State unemployment compensation laws to the railroads and their employees ceased under prohibitions that applied "after June 30, 1939" (52 Stat. 1110; see id. at 1111). Benefits were made payable commencing on July 1, 1939, without awaiting the establishment of the "base year" and "benefit year" that otherwise would be required, by transitional provisions enabling the establishment of special base and benefit years prior to July 1, 1940 (52 Stat. 1113), and the necessary funds were afforded by transfers from State balances and by an advance from the General Treasury (52 Stat. 1104-1105, 1111-1112). See H. Rept. No. 2668 and S. Rept. No. 2164, 75th Cong., 3d Sess. (1938), at 9-10, 12-13. The principal prior extensions of the coverage of the federal/state system were made by P.L. 91-373 (Part A of Title I) in 1970 and by P.L. 94-566 (Part I of Title I) in 1976. The 1970 amendments applied generally "after December 31, 1971" (84 Stat. 696-701). No transition provisions were included so benefits did not become payable in fact until such time after 1971 as was necessary for the employees to accumulate the base year compensation required by the applicable State law. The 1976 amendments applied generally "after December 31, 1977" (90 Stat. 2667-2671). Moreover, transitional provisions (Part II of Title I) enabled the payment of benefits to commence on January 1, 1978, without awaiting the establishment of a base year through creditable compensation on or after that date, by utilizing "previously uncovered services" for that purpose with the resulting benefit costs being paid out of the General Treasury (90 Stat. 2673-2676).

1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act)," upon which the rate decreases to 3.2% (26 U.S.C. § 3301). While the higher rate is in effect, 40% (rather than 10%) of the federal share of the FUTA tax (generally all that over the 2.7% that normally may be offset by State contributions or taxes) is appropriated to the extended unemployment compensation account for use in repaying advances made for the purposes of paying extended benefits under the federal/state system (42 U.S.C. § 1105).

The repayment of any advances made prior to the time that extended benefits become payable to railroad employees under the federal/state system obviously should not be shared by the railroads, and it would be especially inequitable to require them to pay taxes used for that purpose in view of the fact that extended benefits under the railroad system generally have been paid without any assistance from the federal treasury. See Joint Statement at 26-28. Moreover, the normal credit (2.7%) against the FUTA tax for State contributions or taxes is subject to progressive reductions under specified circumstances with regard to employers in States that have not repaid borrowings from the federal unemployment account for use in paying unemployment benefits (26 U.S.C. § 3302). Subjecting the railroads to such reductions (and thus in effect to increased FUTA taxes) insofar as related to borrowings made before benefits are payable to railroad employees under the federal/state system clearly would be inequitable.

Further investigation of the intricacies of FUTA might reveal other instances where, under the OMB proposal as embodied in Sec. 204 of S. 1076, the railroads in effect would be subjected to an increased tax burden because of borrowings or other circumstances related to the period before they are subjected to the federal/state system. That may also be true of the contributions or taxes imposed by the manifold State laws, which can and often do differ from the FUTA tax both as to the tax rate and as to the compensation that is taxable. Moreover, although the State laws must be certified as meeting specified federal standards if State contributions or taxes are to be credited against the FUTA tax to any extent (26 U.S.C. §§ 3302(a)(1), 3304), most of their basic aspects (including the amount of benefits payable, the period during which payable, qualifications and disqualifications) are left to the unfettered discretion of the States. In short, evaluation of the consequences of the OMB proposal in this regard is a massive job which the railroads have not nearly completed and which insofar as appears from the Director's Statement or S. 1076 neither the Director nor OMB have considered in any depth.

Finally, while the Director says (Statement at 8) "any increase in rail UI benefits would be unthinkable," he also says (Statement at 22) that railroad employees under the OMB proposal "would become eligible for typically higher State UI benefits starting on July 1, 1985." Apart from the obvious inconsistency in the approach of those two assertions, they point up the fact that the Director and OMB have ignored the relationship between the level of RUIA unemployment benefits and the fact that the same level of sickness benefits is payable thereunder. Although sickness benefits are not paid under the federal/state system, OMB's proposal would continue the existing provisions of the RUIA for the payment of sickness benefits (funded by the railroads) while affording the employees the "typically higher State UI benefits" (also at the cost of the railroads).

While the foregoing paragraphs merely commence to illustrate the problems that may be involved in transferring railroad unemployment to coverage by the federal/state system, they should suffice to demonstrate that it is not the simple matter that OMB appears to think and that Sec. 204 of S. 1076 is grossly inadequate to achieve that purpose in a fair and equitable manner. It may turn out that the OMB proposal has merit in principle, and it is being seriously considered by the railroads, but such a radical change requires much more thought and time to work out anything like a consensus upon the complex legislation that may be necessary if it is to be done properly. Legislation primarily directed towards the problems of the railroad retirement system does not appear to us to be the right vehicle for such a change in unemployment compensation legislation, and it would be difficult if not impossible to work out appropriate legislative language in time to permit enactment prior to October 1, 1983. Indeed, we understood Director Stockman to urge in oral testimony before the Senate Committee on Labor and Human Resources that it is important to complete the legislative process in May, to afford adequate lead time to effectuate railroad retirement changes that are intended to be made effective as of July 1, 1983, and the railroads agree with that appraisal.

3. Adequacy of the Joint Labor-Management Program. Director Stockman asserts (Statement at 10) that the railroad retirement system's "solvency -- and any solution intended to maintain solvency -- needs to be projected not under 'best guess' assumptions, but under moderately pessimistic assumptions" and "more prudent pessimistic assumptions." He implies (Statement at 10) that railroad labor and management have not learned a lesson from the 1981 amendments, which he says "were gauged against what everyone hoped would happen, not against prudent, pessimistic assumptions," and he concludes (Statement at 11) that the joint labor-management program would not "solve the railroad retirement funding program" and that a "prudent package" would generate from $2 to $4 billion more in the 1983-1988 period. (His Senate statement increased this to some $4 or 5 billion more "in real cash" (p. 11).)

It is true that the projections as to the effects of the 1981 amendments turned out to be overly optimistic, although we do not believe that was because the projections were based on what everyone hoped would be true rather than upon prudent assumptions. It would hardly have been prudent even in 1981 to anticipate that the recession would be so prolonged and so deepened that railroad employment would be cut by about 25% in some 18 months, from 514,000 in July of 1981 to 389,000 in January of 1983. Certainly, we are not aware of any prognostications by OMB at the time which even hinted at such a disaster. In any event, it is not true that railroad labor and management did not take the 1981 lesson to heart and that the joint labor-management program is based upon "best guess" assumptions as to the future course of the economy and of railroad employment. Quite the contrary is true.

Unlike the situation in 1981, there now are strong indications that the recession has bottomed out and at least a moderate recovery has commenced. In its February 18, 1983 Report under § 22,*/ the Railroad Retirement Board pointed out (page 3) that in the prior such situation (the 1974-75 recession), railroad employment increased (although not up to the pre-recession level) when the economy recovered and then held relatively steady until the current recession. If one were relying upon a "best guess," he would anticipate at least a comparable pattern with regard to railroad employment during the next decade, and might well anticipate an even larger surge in the economy and in railroad employment particularly if one accepted predictions made by OMB and the Administration in other contexts as to the future course of the economy.

Nonetheless, in a February 21, 1983 report to the Railroad Retirement Board evaluating the financial impact of the joint railroad labor-management program,**/ the Chief Actuary of the Railroad Retirement Board utilized five employment assumptions (p. 5) every one of which assumes a continued decline in railroad employment, so that even the most optimistic is, to use Director Stockman's terminology, at least a "moderately pessimistic" assumption. Indeed, that is the assumption (Assumption

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*/ That Report is reproduced as Appendix A to H. Rept. No. 98-30 at 60-65.

**/ That Report is reproduced in Appendix D to H. Rept. No. 98-30 at 72-77.

A) that the Congressional Budget Office deemed appropriate for use in its report (see CBO Report at 7), under which railroad employment would continue to decline to 345,000 by 1988 and to 340,000 in 1989-1992. H. Rept. No. 98-30 notes (at p. 30) that Assumption A also was utilized by OMB for purposes of its budget submission. The Railroad Retirement Board, in its § 22 report (pp. 3-4), utilized both Assumption A and Assumption B, which envisages a decline in railroad employment to 315,000 by 1988 and to 310,000 in 1989-1992. As the Board made clear (at page 4), those assumptions do not represent the "best case" or the "worst case," but rather are intended only "to show the sensitivity of estimates to hypothetical levels of railroad employment," and both are obviously pessimistic unless one anticipates a further lengthy prolongation of the current recession.

The three additional employment assumptions made by the Chief Actuary involve declines in railroad employment that hardly could occur in the absence of a full fledged depression or some other economic catastrophe: to 300,000 by 1988 (Assumption C), or 270,000 (Assumption D) or 245,000 (Assumption E), with a further drop to 295,000 in 1989-1992 under Assumption C and a continuation of the 270,000 or 245,000 levels for those years under Assumptions D and E. Director Stockman in his Statement (Table 6 on page 14) labels Assumption A as "High," Assumption C as "Intermediate" and Assumption E as "Low." They could more appropriately be labeled as "Pessimistic," "Abyssmal" and "Catastrophic," and certainly even Assumption A does not represent anyone's "best guess" or "hope" as to the actual level of railroad employment in the next five or ten years.

Yet, the Chief Actuary of the Railroad Retirement Board has concluded (pages 5-6 of his report) that under all of those employment assumptions — ranging from pessimistic to catastrophic --, if the joint labor-management program is enacted without significant change, the railroad retirement system will have sufficient funds to pay full benefits through 1992 and that only under the catastrophic assumptions of Assumption E will the cash balance of the railroad retirement account be so low that new corrective action might have to be taken in 1992. In short, in the view of the actuarial expert most familiar with the railroad retirement system, "enactment of the agreement has an excellent chance of resolving railroad retirement's financial problems for the foreseeable future" (page 6 of his report).

Indeed, although Director Stockman apparently intended to give the contrary impression, that conclusion in fact is reinforced by Table 4 on page 12 of his Statement, once it is recognized that the figures for "Amount Owed" shown therein simply represent borrowings by the railroad retirement account against amounts currently owing to it by the social security trust funds under the financial interchange. The Director notes elsewhere in his Statement (on page 4) that the total owed to railroad retirement under the financial interchange amounts to about $2 billion each fiscal year, yet even under the catastrophic Assumption E Table 4 predicts borrowings in 1988 against that amount of only $1.467 billion, of only $397 million under Assumption C, and a surplus of $737 million without any such borrowings under Assumption A. Any such borrowed amounts represent amounts already owing to the railroad retirement account, although payment by the social security trust funds is delayed for some 15 months, and thus are amounts that would be regarded as assets of the railroad retirement account under normal accounting principles. Upon OMB's own showing, therefore, and upon the basis of even unreasonably pessimistic employment assumptions, enactment of the joint railroad labor-management program will assure the financial solvency of the railroad retirement system at least through 1988, and there is strong reason to believe that -- as the Chief Actuary of the Railroad Retirement Board has concluded -- it will do so thereafter for the foreseeable future.

Of course, no one can be absolutely certain about the course of future events in regard either to the nation's economy in general or the railroad industry in particular. The railroads agree that for purposes of assessing the joint labor-management program one should not be content with best guesses or rosy hopes, and instead should look to "moderately pessimistic assumptions." That is what in fact has been done by the Chief Actuary of the railroad retirement system, and he has gone further to look also at extremely pessimistic assumptions in concluding that the program should preserve the financial solvency of the railroad retirement system for the foreseeable future. But one also should be wary of going too far in the other direction, and basing present increases in railroad retirement taxes upon assumptions as to future railroad employment that are unduly pessimistic. There is real danger that such overly pessimistic assumptions could become self-fulfilling through imposition of a tax load that would seriously cripple if not destroy the ability of the railroads to participate in and contribute to a recovery from the current recession. That would not benefit the country or the economy in general, much less the railroads, but it is a possible consequence of the large railroad retirement tax increases recommended by OMB over and above the very large tax burden now imposed on the railroad industry and the substantial increases included in the joint labor-management program.

4. The Equity to Retirees of the Joint Labor-Management Program. Director Stockman asserts (Statement at 10) that the joint railroad labor-management program "is inequitable to rail retirees" because they will "feel the burden of their sacrifices starting this July 1," while "rail employers and rail employees remain unaffected for 16 months, until July 1, 1984." This is a red herring since the July 1, 1984 starting dates for the railroad retirement tax increases that would be imposed upon the railroads and their employees were taken into consideration in determining the size of those recommended increases. The depth of OMB's concern for equity to "the million retirees" can be measured, and found wanting, when it is realized that OMB would rectify the alleged inequity by imposing an additional 1% increase in the tax on railroad employers and employees as of July 1, 1983; and when it is further realized that OMB's program would neither reduce nor delay the "sacrifices" of those retirees, but rather would impose an additional sacrifice under which their Tier II benefits could be further reduced. See pp. 39-50 infra.

Moreover, there is a very good reason for delaying any tax increases until July 1, 1984 which the unions representing the interests of railroad employees and retirees understood and accepted. The existing national collective bargaining agreements between the railroads and unions, which were executed in 1982 before it became apparent that further increases in railroad retirement taxes might be required, call for increases in labor costs (including already scheduled railroad retirement tax increases) amounting to some $1.2 billion in 1983 alone. The railroads cannot afford what in effect would be a further increase in labor costs during 1983, and it would be grossly unfair to require them to do so at a time when the existing collective bargaining agreements are not subject to reopening. Those agreements can be reopened as of July 1, 1984, so that the collective bargaining with respect to wages from that date onward can take into consideration any retirement tax increases made effective on or after that date. That is the reason why the railroads urged in negotiating the joint labor-management program with the unions that no tax increases be imposed before July 1, 1984, and the unions obviously did not believe that they were being inequitable to retirees in accepting that starting date.

5. The Federal Role. Director Stockman asserts that the threatened cash deficiency in the railroad retirement account "cannot be closed with mirrors or accounting gimmicks" (Statement at 2), that a real solution is "not one accomplished with mirrors" and "cannot include permanent, open-ended General Treasury contributions, either subsidy appropriations or loans lacking the prospect of repayment" (id. at 18). He not only implies that such language is descriptive of the joint railroad labor-management program, but expressly asserts that the program relies "on general revenue bailouts" (id. at 11).

We regret that the Director has seen fit to use such pejorative language about a serious program supported by both railroad management and railroad labor even though it would both impose substantial increases in railroad retirement taxes and substantial reductions in future railroad retirement benefits. Certainly, such language cannot be justified by the very limited role that the General Treasury would play under that program. Under the joint labor-management program, that role would not consist of "bailouts" but would amount to no more than simple justice to the railroad industry, including the "1 million former rail workers, their families and survivors," and the "388,000 active rail employees" to whom -- as Director Stockman says (Statement at 1) the railroad retirement system and its solvency are of "vital importance . . . ."

(a) Borrowing against the financial interchange. Even when the railroad retirement and social security systems were separately established in the 1930s it was recognized that social security was thereby relieved "of a higher-than-average cost segment of the working population," and that "this represented a windfall to the Social Security System which should at some appropriate future time be made good to the Railroad Retirement System." See H. Rept. No. 976, 82d Cong., 1st Sess. (1951) at 52. See, also, S. Rept. No. 890, 82d Cong., 1st Sess. (1951) at 8. Thus, when the financial interchange between the two systems was enacted in 1951 (retroactive to 1937) it was contemplated that social security "will reimburse the railroad retirement account to the extent necessary to put the social security system in the same position it would have been except for the separate existence of the railroad retirement system," pursuant to a "congressional policy that the social security system shall neither profit nor lose from the existence of the separate railroad retirement system." S. Rept. No. 890 at 8. See, also, H. Rept. No. 1215 (Conference Report), 82d Cong., 1st Sess. (1951) at 13.

Hence, the financial interchange represents a long-established and thoroughly justified "congressional policy," and not just a conception of the "rail sector" as the Director suggests (Statement at 3). While the amounts transferred to the railroad retirement system in recent years have been around $2 billion a year, as the Director acknowledges (Statement at 4) this simply reflects the fact that railroad retirement "administers social security equivalent benefits for former rail workers, their families and survivors." The financial interchange, consequently, is in no sense a subsidy or bailout of the railroad retirement system, but simply a payment to that system by social security of amounts that railroad retirement has saved social security from paying directly.

Unfortunately, the transfers of payments by social security to railroad retirement for an entire fiscal year are not made until June of the next fiscal year, causing a delay averaging 15 months during which the railroad retirement account in effect is loaning that money to the social security trust funds. While railroad labor and management have suggested in the past that the transfer of funds pursuant to the financial interchange should be placed on a current basis, this has been objected to because of its effect upon the financial problems of the social security system. In 1981, the Congress sought to overcome the unfairness of such delayed payments to the railroad retirement system without adversely affecting the social security system by authorizing railroad retirement to borrow from the General Treasury against amounts owing by social security under the financial interchange, with all outstanding borrowed amounts being repaid with interest when a transfer was received from social security. While that 1981 amendment has the effect of reducing the delay before railroad retirement can take advantage of amounts owed by social security, it was worded in such a way that the delay was not fully eliminated and could still amount to several months. See Joint Statement at 19-21.

The joint labor-management program would simply put those borrowings against the financial interchange on a current (monthly) basis, with the amounts borrowed being limited to the amounts owing from social security for the particular months, thus fully effectuating the intent of the 1981 amendment. The full amount of outstanding loans during a fiscal year would be repaid with interest after receipt by railroad retirement of a transfer by social security under the financial interchange for that fiscal year, similar to the procedure under the 1981 amendment. Director Stockman thus is plainly wrong in asserting (Statement at 18) that railroad labor and management "seek to increase that loan authority by over $1 billion, with no statutory mechanism for -- or prospect of -- repayment." The loaned amounts would not exceed the amounts currently owing under the financial interchange, and repayment with interest would be assured by a "statutory mechanism" similar to the one that now assures such repayment.

Hence, this proposal would simply give the railroad retirement system its due on a current basis. The General Treasury would be involved even in the form of repayable interest-bearing loans only to avoid any adverse effect on the social security system from placing the financial interchange itself on a current basis, rather than because of some concern of the railroad retirement system. Indeed, OMB's own program would "[r]ecognize the parties' underlying request that the financial interchange be placed on a current . . . basis," and authorize "increased general fund borrowing" during a transition period "until 1992, when [the financial interchange] would be converted to a current basis and the borrowing authority would terminate" (Statement at 21). See Sec. 205 of S. 1076. In short, the joint labor-management proposal in this regard is neither a subsidy nor a bailout, but merely would make available on a current basis funds owing to the railroad retirement account under a long-established and unquestionably justified congressional policy, as OMB appears to recognize in the final analysis.

(b) Borrowing by the railroad unemployment insurance system. Under the general federal-state unemployment compensation systems, basic benefits are financed by the States through employer contributions or taxes as are one-half the costs of extended benefits under the Federal-State Extended Unemployment Compensation Act of 1970. The other half of the costs of extended benefits under that Act are paid by the Federal Government out of its share of the federal unemployment tax paid by employers. When State unemployment tax revenues are insufficient to pay full benefits, the necessary funds are obtained through repayable advances from the federal unemployment account which in turn is replenished by interest-free repayable advances from the general fund of the Treasury. So, too, when federal unemployment tax revenues are insufficient to pay the federal share of extended benefits under the 1970 Act, the necessary funds are made available through interest-free repayable advances to the extended unemployment compensation account from the general fund of the Treasury. The States have not been required to pay interest on their borrowings except that, under a 1981 amendment as revised by the Social Security Amendments of 1983, interest is paid on advances made after March 1982. Moreover, additional extended benefits may be payable under the Federal Supplemental Compensation Act of 1982 which are financed in their entirety by the general fund of the Treasury through nonrepayable advances to the extended compensation account. See Joint Statement at 25-27.

Under the Railroad Unemployment Insurance Act, on the other hand, the entire cost of both basic and extended benefits has been financed through contributions or taxes paid by railroad employers.*/ If those tax revenues are insufficient to pay full benefits, the necessary funds are obtained through advances from the railroad retirement account which are repayable with interest. When such borrowing was authorized by a 1959 amendment to the RUIA, it was thought that it would not jeopardize the financial soundness of the railroad retirement system, and that was true for many years, as the balance in the railroad retirement account was more than adequate to make such loans to the railroad unemployment insurance account when necessary, and they were repaid with interest. See Joint Statement at 22-23. However, the balance in the railroad retirement account no longer is adequate to make such loans without jeopardizing its ability to pay full retirement benefits. The joint railroad labor-management program, therefore, proposes to transfer the source of such borrowings from the railroad retirement account to the general fund of the Treasury, thus providing the same source of borrowing authority that has long been available to the States under the federal-state unemployment compensation system. The railroad unemployment compensation system would continue to be required to repay such loans with interest, and that system would not otherwise be affected. See Joint Statement at 21-29.

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*/ P.L. 98-8, enacted in March of this year, created a limited exception in providing for the payment of supplemental extended benefits, out of appropriations from the general fund, to employees with less than 10 years of railroad service, for up to 50 days generally between March 10 and June 30, 1983. See Joint Statement at 27-28.

Director Stockman asserts (Statement at 14) that there is "no prospect of repayment" so that, although "characterized by the parties as a loan, this would amount to an outright general fund grant as unmet interest repayments accelerate the spiralling debt." Even if true, that would also be true of the loans now made or being made by the railroad retirement system. The debts of the States under the federal-state system also are "spiralling," there is not even a requirement that the general fund be paid interest on advances it makes under that system, and advances made by the general fund to pay the full costs of extended benefits under the Federal Supplemental Compensation Act of 1982 are not even required to be repaid and thus clearly constitute an outright grant.

Moreover, the railroad unemployment compensation system would continue to be under a statutory obligation to repay the loans with interest. It has managed to fulfill that obligation prior to the current recession, and while the resulting drastic increase in railroad unemployment has necessitated borrowings at a hitherto unprecedented level, that problem can be addressed in legislation focussed upon the railroad unemployment compensation system. Indeed, the OMB program (Statement at 22) would transfer the source of that system's borrowing authority from the railroad retirement system to the Treasury during a transition period prior to including railroad employers and employees in the federal-state unemployment systems. As is demonstrated on pp. 8-17 *supra*, OMB's radical proposal to terminate the railroad unemployment compensation system, even if it should be deemed to be desirable in principle, might well delay enactment of the pending legislation beyond October 1, 1983 because of the difficulties involved in drafting acceptable legislative language. If that and other issues relating to the railroad unemployment compensation system are addressed at some later time, any questions going to the obligation and ability of the railroad unemployment compensation system to repay its borrowings with interest can also be considered. In view of the substantial savings to the Federal Government from the separate existence of the railroad unemployment compensation system for some 45 years, it might well be concluded that such loans should not be repaid or at least that interest should not be payable, but those also are matters to be considered at some more appropriate time.

(c) Windfall appropriations. So-called "windfall" benefits essentially are social security (Tier I) benefits. They are entirely attributable to non-railroad (social security) employment by individuals who have sufficient railroad service to qualify for railroad retirement benefits. When the Congress reconstructed the railroad retirement system in 1974, it eliminated future qualification for such windfall benefits, but concluded that the vested rights of retirees and of employees who already had qualified for a windfall should be preserved. The Congress also concluded almost unanimously that it would be unfair to impose the costs of paying those preserved windfall benefits upon either the railroads, who received no advantage from the non-railroad employment that gave rise to the windfall, or upon existing railroad employees, who could no longer qualify for a windfall; and that the fairest solution was to pay those costs out of appropriations from the General Treasury. Hence, the 1974 Act authorized appropriations, over a 25-year period, intended to pay the full costs of the preserved windfall benefits. See Joint Statement at 29-32.

The actual appropriations during the 1975-1981 period were insufficient to pay the full costs of preserved windfall benefits paid out of the railroad retirement account during that period, which caused a substantial drain upon the cash balance in that account. That problem was remedied for the future by a 1981 amendment under which windfall benefits paid out during a fiscal year are limited to the amounts actually appropriated to fund such payments in the fiscal year. The 1981 legislation did not, however, address the shortfall in appropriations during the period prior to October 1, 1981, which now amounts (including accumulated interest) to about $1.7 billion. The joint railroad labor-management program would have the Congress fulfill the commitment it made in 1974 by transferring the funds necessary to make up for that shortfall, in three installments, from the general fund of the Treasury to the railroad retirement account.

The Director asserts (Statement at 15) that railroad labor and management thereby are seeking "to reopen only one element" of a 1981 "comprehensive agreement entail[ing] a series of compromises." We are not aware of any such agreement, and certainly railroad labor and management never agreed to forgive the shortfall in windfall appropriations either in 1981 or at any other time. Nor are we aware of any expression by the Congress of an intent that the 1981 amendments foreclose that issue despite the commitment made by the Congress in 1974.

The Director also says (Statement at 16) that the estimated costs of preserved windfall benefits have tripled over the estimated cost in 1974, and that the "cost to the Federal government of future windfall subsidies was massively increased" by an aspect of the 1981 amendments under which the "authorization for windfall subsidy costs was made open-ended" instead of ending with the year 2000. The references to those appropriations as "subsidies" is completely unjustified in our view. It is just as true now as it was in 1974 that the costs of paying preserved windfall benefits cannot fairly be imposed on the railroads or their employees, and the same reasons exist now as existed then for paying those costs out of the General Treasury. In any event, the Congress in 1974 clearly did not intend to limit windfall appropriations to estimates made at that time as to what the costs might be. Rather, § 15(d) of the 1974 Act expressly authorized appropriation of amounts to be determined by the Railroad Retirement Board, which determinations were to be "re-evaluate[d]" by the Board "at the time of each actuarial valuation made prior to the fiscal year 2000 . . . ." And, the amounts authorized to be appropriated were not increased by the 1981 amendment eliminating the provision under which such amounts were to be appropriated during a 25-year period ending in the year 2000. The amounts so to be appropriated were intended to cover (on a level basis) the full costs of windfall benefits, including those incurred after the year 2000. See S. Rept. No. 93-1163 (1974) at 53. The 1981 amendment simply spreads out the period of the appropriations, and thus could be said to have eased any burden on the Treasury.

We note that the Director states (Statement at 17) that the "Administration is prepared, as part of an overall, equitable settlement, to convert the windfall to an annually appropriated entitlement, removing the authority to limit windfall benefits to the appropriated amount." Even assuming that this means that the full costs of windfall benefits will be permanently appropriated, rather than a return to the pre-1981 system under which any shortfall in appropriations was made up by the railroad retirement account, it is not a reason for refusing to remedy the shortfall during the 1975-1981 period. Any "overall, equitable settlement" surely should include fulfilling that commitment, and certainly we do not conceive any reasonable justification for penalizing the railroads and their active employees in return for a departure by OMB from its policy heretofore of opposing appropriation of the amounts necessary to pay full windfall benefits. In fact, OMB's bill (Sec. 206 of S. 1076) would repeal § 15(d) of the 1974 Act as amended in 1981, thus abolishing the Dual Benefits Payments Account established thereunder, and substitute a provision merely authorizing appropriations for the payment of windfall benefits. Hence, the pre-1981 situation, under which shortfalls in windfall appropriations were made up by a drain on the railroad retirement account, apparently would be restored by OMB.

Moreover, the Director did not mention and apparently did not give any weight to the fact that, as the Congress noted when it enacted the 1974 Act, the railroad retirement account already has been drained of more than some $4 billion through the payment of windfall benefits attributable to non-railroad employment. H. Rept. No. 93-1145 and S. Rept. No. 1163 (1974), at 2. If that amount had remained in the railroad retirement account to earn interest, it in itself might well be sufficient to avoid any cash shortage in the railroad retirement account. Since the joint labor-management proposal would not compensate the railroad retirement account for any of that loss, and would merely fulfill a commitment that the Congress made in 1974 to pay the costs of future windfall benefits out of the General Treasury, the "overall, equitable" nature of that proposal cannot reasonably be questioned.

(d) The federal share. Director Stockman asserts (Statement at 8) that under the joint railroad labor-management program "55% of the . . . 'solution' comes from general fund loans and grants," which is said to be demonstrated by Table 3 on page 9 of his Statement.*/ Apart from the fact that the percentage shown by that Table is 54 rather than 55%, that assertion is both erroneous and misleading. Before demonstrating why that is so, however, we note that as shown above the limited federal assistance that would be provided under the joint labor-management program is thoroughly justifiable even if it would constitute 100% of the "solution."

In the first place, there is no justification for including in Table 3 "General fund borrowing against interchange," which amounts to 14 of the 54% general fund share shown by that Table (13 of 56% in the Senate Statement). As we have demonstrated (pp. 24-27 supra), those are borrowings against amounts already owed to the railroad retirement system by the social security system and which in fact are paid after a delay of some 15 months. The joint labor-management proposal in that regard would merely make more effective a borrowing authority that already is provided under a 1981 amendment, and the general fund is assured of full repayment with interest of all outstanding amounts when social security transfers the amounts that it owes to railroad retirement. To include such borrowed amounts in the share which would be borne by the general fund would be truly an "accounting gimmick" and a resort to "mirrors" which Director Stockman elsewhere decries (see p. 23 supra), and is "particularly inappropriate" as House Report No. 98-30 noted at p. 30.

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*/ The Director's Senate Statement increased that percentage to 56 (p. 8), and revised some of the figures in Table 3 which was renumbered as Table 4 (p. 9).

Secondly, OMB appears to have underestimated the savings that would result from benefit reductions even in regard to the 1983-1988 period to which the Director's Statement is limited. For example, if Table 3 of the Stockman Statement is compared with Table 2 on page 3 of the CBO Report, the savings attributed to "60/30 and DI reform" are $480 million as compared to $690 million; the savings attributed to "COLA Delay" and "Tier II COLA offset" total $950 million as compared to $1,551 million; the increased funding resulting from "Tax on Pension" is $500 million as compared to $647 million, and the OMB Table omits entirely a saving from reduction in student benefits which the CBO Report estimates at $30 million. If conformed to the CBO Report, the 1,930 total shown on Table 3 would be increased by $988 to $2,918 millions.*/

Thirdly, and perhaps most significantly, whatever the proper figures for the 1983-1988 period might be, a Table limited to that period necessarily overstates the role that would be played by the general fund of the Treasury while understating the significance of the increases in railroad retirement taxes and the reductions in railroad retirement benefits. A similar table constructed for a ten or twenty year period would show a very different picture. For example, the February 21, 1983 report of the Chief Actuary of the Railroad Retirement Board estimates that, ove the 1983-1992 period, the tax increases and benefit reduction will amount to 7.9% of Tier II taxable payroll (page 2), while the three proposals involving the Treasury would amount to only 5% of Tier II taxable payroll (page 4). If borrowings repayable with interest are disregarded, the federal share over that 10-year period is only 18.7% of the total package, according to H. Rept. No. 98-30, and that "is really a repayment of money owed to the retirement system, so in one sense, the government share is zero" (page 30).

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*/ Those figures from Table 3 were not changed in Table 4 of the Senate Statement, although some changes were made in the percentages of savings attributed to them.

Of the 54% attributed to the general fund by OMB's Table 3, 25% is credited to the proposed windfall appropriations, which are a one-time affair (in three installments) that will not be repeated in later years, and 14% is attributed to borrowings against the financial interchange, which is also basically a one-shot affair as they essentially will turn over year-by-year with the prior year's borrowings being repaid (with interest) as another year's borrowings commence. Only the borrowings by the railroad unemployment insurance system (the remaining 15% of OMB's total of 54%) are subject to any significant real increase after the initial borrowings occur, and even there the initial borrowings should constitute the larger part, particularly if future interest is considered, as they will include the amount now owed by the unemployment system to the retirement system.*/ Moreover, these borrowings are repayable with interest. On the other hand, the tax increases will be in effect (the third such increase on an "if necessary" basis) and thus add to tax revenues not only during the 1983-1988 period but also for each year thereafter unless and until removed by a subsequent statutory amendment. So, too, the benefit reductions, including the income tax on retirement benefits, will continue to be made, and thus to improve the financial status of the railroad retirement system, indefinitely in the absence of a subsequent statutory amendment, with the exception of the offset against Tier II benefits of Tier I COLA increases which will occur only until 5 percentage points of such increases have been offset.

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*/ In Table 4 of the Senate Statement, 23% is attributed to the windfall appropriations, 13% to the borrowings against the financial interchange, and 20% to the borrowings by the railroad unemployment insurance system, for a total of 56%.

In view of these considerations, the joint railroad labor-management program cannot fairly be accused of placing the bulk of the "solution" upon the General Treasury. Furthermore, and most importantly of all, we repeat that each of the joint labor-management proposals that relate to the federal role should be considered on its own merits. If that is done, they are justifiable regardless of the relative percentage of the "solution" which they bear. Indeed, OMB's program would include the borrowing authority against the financial interchange and the transfer of the source of the borrowing authority of the railroad unemployment insurance system, and its objections to the proposed windfall appropriations are without valid foundation.

B. OMB's Program

The misconceptions underlying the major themes of the Director's testimony are reflected in OMB's program for preserving the financial solvency of the railroad retirement system. OMB adopts the tax increases and benefit reductions recommended by railroad labor and management,[*/] but would refuse to make up any part of the shortfall in windfall appropriations and would impose large additional tax increases and benefit reductions. Its program appears to us to exhibit more of a desire to utilize the railroad retirement system as a vehicle for reducing the federal budget deficit than being directed primarily to doing only what is necessary to preserve the financial solvency of the railroad retirement account. In addition, OMB's proposal to destroy the railroad unemployment compensation system is both inappropriate for legislation focussed upon the railroad retirement system and could give rise to complex and controversial issues that would make virtually impossible the enactment of legislation in time to prevent a 40% reduction in the Tier II benefits affecting some 1 million railroad retirees, their families and survivors. Furthermore, OMB's program has other defects, as we indicate below.

1. Railroad Retirement Tax Increases. Existing railroad retirement taxes are very high and they would be increased by the joint labor-management program to a level that is truly frightening. The Tier I railroad retirement tax rate automatically is equivalent to the social security tax rate, and thus now is 6.7% of taxable compensation as to both employers and employees, and will further increase in accordance with increases in the social security tax rate including the acceleration in

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[*/] For reasons that are not apparent to us, S. 1076 omits all but one (Sec. 104) of the technical amendments that are a part of the railroad labor-management program. See Joint Statement at 34-40.

the statutory schedule for such increases provided in recently enacted legislation reforming the social security system. The Tier II employer tax rate, which is now 11.75% of taxable payroll, will be increased under the joint labor-management program by 1% of July 1, 1974, by an additional 1% on July 1, 1985, and if necessary for years after 1985 by a further 1.5% for 12-month periods commencing July 1, to a total of 15.25% of taxable payroll when the "if necessary" tax increase is in effect. In addition, railroad employers pay a supplemental tax -- geared to the costs of certain supplemental benefits -- that presently is 18.5 cents for each employee hour for which compensation is paid. The Tier II employee tax rate, which now is 2% of taxable compensation, would be increased by the joint labor-management program by 0.75% on July 1, 1984, by another 0.75% on July 1, 1985, and may be increased by a further 0.75% of the same "if necessary" basis in years after 1985, for a total of 4.25% of taxable compensation when that "if necessary" tax increase is in effect.

If all those tax increases are effectuated, the total railroad retirement tax on employers -- including the Tier I and the supplemental tax -- will amount to about 24.85% of Tier II taxable payroll or some 20% of all compensation paid by the employers. Taken together, the total tax rate on both railroad employers and employees could amount to almost 36.8% of Tier II taxable compensation or about 29.6% of all compensation. That obviously is an enormous tax burden that approaches if it does not exceed the limit that any industry reasonably should be expected to bear. Anything more might well threaten the viability of the railroad industry. Nonetheless, OMB would make the third "if necessary" tax increase "permanent, not contingent" (Statement at 21), and would impose an additional 1% Tier II tax increase on both employers and employees effective July 1, 1983 (Statement at 22). Furthermore, OMB would substantially increase the maximum on Tier II taxable compensation (Statement at 22). See Secs. 105-107, 202 and 203 of S. 1076. The overall effect of these proposals would be to increase the Tier II employer tax rate to a total of 18.65% of present Tier II taxable payroll or to 15% of all compensation, and to increase the employee Tier II tax to 6% of present Tier II taxable compensation or 4.9% of all compensation.*/

The combined Tier I and Tier II (including the supplemental tax) tax rate on employers would increase to 28.25% of present Tier II taxable compensation and 22.7% of all compensation, on employees would increase to 13.75% of present Tier II taxable compensation and 11.06% of all compensation, and on employers and employees together would amount to 42% of present Tier II taxable compensation and 33.8% of all compensation. The House Committee on Energy and Commerce was more than justified in being "concerned that the railroad industry would be unable to bear this increased burden, particularly during this severe recession." H. Rept. No. 98-30 at 31. In our view, such a tax burden clearly would be intolerable when imposed on an industry that for many years has been plagued by bankruptcies and other severe financial difficulties and that in 1982 had a net return on investment from railroad operations of only 2.3%. Such a drain on the railroads' finances could severely cripple their ability to participate in and contribute to a recovery from the recession, with consequent increases in railroad employment, and thus, among other things, ultimately could undermine rather than contribute to the financial solvency of the railroad retirement system. See H. Rept. No. 98-30 at 31-33.

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*/ These figures and those in the first sentence of the next paragraph do not include the further increase that would result from OMB's proposal to convert the railroad retirement wage base from a monthly to an annual basis. See pp. 42-47 infra.

Director Stockman did not give any reason in his Statement for making the third "if necessary" tax increase proposed by railroad labor and management "permanent, not contingent," and plainly there can be no valid reason for doing so if the intent of any such tax increase is to preserve the financial solvency of the railroad retirement system rather than simply to reduce the federal budget deficit. By definition, under the joint labor-management program that tax increase will be imposed when necessary to preserve the solvency of the system and will not be imposed when not necessary for that purpose. The additional 1% tax increase whicl OMB proposes to impose on both employers and employees as of July 1, 1983 apparently is tied in with OMB's curious notions of equity to existing retirees (see Statement at 19), but as we have demonstrated (pp. 22-23 supra), the result would be inequity to the railroads and their active employees, and such a further tax increase also is not necessary to preserve the financial solvency of the railroad retirement system (see pp. 17-22 supra).

Perhaps the most astounding and most radical of OMB's tax proposals is the one that would increase the Tier II wage base and convert the wage base from a monthly to an annual basis. The Director describes that proposal (Statement at 22) as one that would "[c]onform Tier I and Tier II wage bases to the social security wage base, effective July 1, 1983." The maximum on creditable and taxable compensation under the railroad retirement statutes is a monthly maximum that is one-twelfth of the annual maximum under the social security statutes, except that for purpose of Tier II benefits and taxes certain arbitrary increases in the social security maximum are disregarded. We had understood this OMB proposal as supported in the Director's Statement (see pp. 4-5) as being limited to subjecting the Tier II maximum -- and thus the Tier II wage base -- to those arbitrary increases. However, Sec. 203 of S. 1076 makes clear that OMB also would convert the railroad retirement wage base from a monthly to an annual basis in regard to both creditable and taxable compensation. Both aspects of that proposal would increase railroad retirement benefits as well as railroad retirement taxes without any valid justification.

Section 230 of the Social Security Act provides a formula for increasing both the "contribution and benefit base" (i.e., the maximum on the wages that are taxable for tax purposes and creditable for benefit purposes) in general accordance with increases in the cost of living. The Social Security Amendments of 1977 (P.L. 95-216, 91 Stat. 1509), as a part of broad revisions of the social security system including a strengthening of its finances, amended that provision to include (as § 230(c)) the imposition of a series of arbitrary increases in that wage base in 1978, 1979, 1980 and 1981 which were larger than would have been produced by the § 230 formula, with that formula again applying to govern increases in the wage base after 1981. 91 Stat. 1513. Those arbitrary increases automatically apply to the taxable and creditable wage base under Tier I of the railroad retirement system and would have done so under Tier II of that system had not the Congress expressly provided, in § 230(c) as thus amended, that those arbitrary increases "shall be disregarded" for purposes of Tier II taxes and benefits, which thereby continued to be subject to the formula increases in the 1978-1981 period as well as thereafter. 91 Stat. 1513-1514.

The reason for excepting the Tier II wage base from those arbitrary increases is obvious. They were intended to help meet the financial requirements of social security, which intent carried over to Tier I of the railroad retirement system as it is the general equivalent of social security for railroad employees, but that intent had nothing at all to do with Tier II of railroad retirement which in effect is an industry pension plan over and above what social security provides. The exception of Tier II did not "cause[] a steadily increasing revenue drain on the rail industry pension fund" as Director Stockman asserts (Statement at 4), but simply recognized that Tier II is in effect "a rail industry pension fund" that should not be affected by legislation that was limited to social security and the related Tier I aspect of railroad retirement. The Tier II wage base continued to be adjusted under the standard § 230 formula in accordance with cost-of-living increases, and thus Tier II taxes (and benefits) continued to increase rather than being reduced in any way. The fact that the differential between the social security and the Tier II railroad retirement wage base will continue to widen in absolute terms, as indicated in Table 1 on page 5 of the Director's Statement, merely reflects the fact that the percentage increases after 1981 under the standard § 230 formula are applied to differing bases. The percentage of the increase is the same with regard to both.

The railroad retirement system's use of a monthly maximum can result in less creditable and taxable compensation than would an annual maximum, as where an employee does not receive any compensation (or less than the monthly maximum) in one month of the year, but his compensation in other months meets or exceeds an annual maximum. But it is sheer hyperbole for the Director to assert (Statement at 4) that this "discrepancy robs railroad retirement of about $50 million each year in Tier I pension contributions [*i.e.*, taxes]," and that "it can also inadvertently lower a worker's benefits."

In fact, there is no "robbery" and no "inadvertence" and the Director's use of such language has no justification. Either a monthly or an annual wage base is acceptable in itself, and there is no inherent reason why one is preferable to the other. From the beginning, however, railroad retirement (which preceded social security) has utilized a monthly wage base while social security has utilized an annual wage base, in regard to both the wages that are creditable for benefit purposes and those that are taxable for tax purposes. Thus, to the extent that any discrepancy between a monthly and an annual wage base may in itself lead to slightly lower railroad retirement taxes being paid in regard to particular employees it also may lead to slightly lower benefits being payable to those employees upon retirement, as to both Tier I and Tier II taxes and benefits. Both facets of the monthly wage base are well known features of the system that have existed from the beginning -- and intentionally rather than inadvertently so -- and of course have been considered along with other relevant factors in the adjustments that have occurred over the years in railroad retirement benefits and taxes.

While higher, the railroad retirement wage base would continue to be the same with regard to both taxes and benefits under OMB's proposal as it would be implemented by Sec. 103 of S. 1076. Under § 3(b) of the Railroad Retirement Act, an employee's Tier II pension upon retirement is computed under a formula utilizing his highest 60 months of creditable compensation, and spouse Tier II benefits under § 4(d) and survivor Tier II benefits under § 4(g) are a percentage of the employee's Tier II benefits. Hence, both subjecting Tier II to the arbitrary increases in the social security maximum and the conversion of railroad retirement from a monthly to an annual maximum would increase the benefits payable to future retirees as well as railroad retirement taxes, and those increases would be very substantial in regard to Tier II benefits and taxes, although the Director's Statement gives no apparent consideration to the effect of the benefit increases. See, e.g., Table 9 on page 20.

Surely, this is no time for such a benefit increase which has not even been suggested by railway labor, and plainly the resulting tax increase cannot be justified in view of the staggering railroad retirement tax load otherwise imposed on the railroad industry. The magnitude of that tax increase is indicated by Table 9 on page 20 of the Director's Statement, which shows that during the 1983-1988 period it would be only a little less than OMB's other proposed tax increases (including those proposed by labor and management) put together. Indeed, a revision of that Table in the Director's Senate Statement (Table 10 on page 20) attributes more than half of the total proposed tax increase upon the railroads to this proposal.

2. Benefit Adjustments. The joint labor-management program would adjust the future benefits payable by the railroad retirement system in a manner that would result in substantial savings to the railroad retirement account, through reductions in the benefits payable to early (60/30) retirees, delaying COLA increases, offsetting certain Tier I COLA increases against Tier II benefits, imposing a five-months waiting period in regard to eligibility for disability benefits, and making benefits subject to income taxes with the proceeds of such taxes being paid into the railroad retirement account, among other things. See Joint Statement at 13-18. As presented to the House Energy and Commerce subcommittee, the OMB program would adopt all of those proposals and in addition, with regard to individuals "receiving railroad retirement benefits in excess of $13,200 annually," would offset all future Tier I COLA increases against Tier II benefits otherwise payable. Statement at 21-22.

However, in his Statement to the Senate Committee on Labor and Human Resources (at 21), Director Stockman abandoned that proposal and substituted a proposal to "[t]ie the industry pension COLA increases to trust fund solvency by providing a COLA if industry pension reserves exceed 125% of the previous year's pension payments." And, Sec. 201 of S. 1076 would prevent the COLA increases now provided for Tier II benefits

(32.5% of the increases in the applicable index), and also those now provided for Tier I benefits (100% of increases in the applicable index) insofar as not recompensed under the financial interchange, "if the amount in the Railroad Retirement Account available on the preceding September 30, excluding unrepaid advances or loans from the general fund of the Treasury, to pay such non-social-security portion is less than 125 percent of the amount actually expended during the fiscal year ending on such September 30 to pay" such benefits.

OMB was well advised to abandon its original proposal,*/ but the substitute also is objectionable and the Director's Senate Statement did not include any asserted justification. Such a proposal to restrict Tier II COLAs may not be as drastic as the proposal for which it would substitute, although we cannot be certain in the absence of more information as to how it would work. In any event, it appears to be similar in concept to a proposal in regard to social security COLAs which was rejected by the Social Security Amendments of 1983 in favor of a provision that is similar in concept to § 22 of the 1974 Act as it would be revised by H.R. 1646. See pp. 53-54 infra, and H. Rept. No. 98-47

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*/ Even apart from the fact that such a Tier II benefit reduction had not been agreed to by labor or management, the $13,200 means test would be an innovation for which no justification was asserted, and for persons who met that means test the result in time would have been to eliminate all Tier II benefits given even moderate inflation. Since Tier I COLA increases are measured by 100% of increases in the cost of living while Tier II COLAs are limited to 32.5% of cost-of-living increases, there would have been a gradual diminution of Tier II until it was extinguished unless, contrary to history, the cost of living did not continue to inflate.

(Conference Report, 1983) at 133-134. It is even less appropriate with respect to Tier II of the railroad retirement system which, as the Director sometimes appears to recognize, is a "rail industry pension" as to which the joint recommendations of railroad labor and management should be particularly persuasive to the Congress.

While this OMB proposal superficially might seem to be in the best interests of the railroads, we have to live with our employees and their union representatives, and we recognize -- as has the Congress -- that Tier II adjustments basically should be worked out in negotiations with the unions leading to joint recommendations to the Congress. The best interests of the railroads and of the country wll be served in the long run, we believe, by enacting the joint labor-management program intact rather than by including drastic further reductions in railroad retirement benefits which railway labor has not agreed to and could not realistically be expected to accept.

Finally, we note that OMB's apparent acceptance of the proposal by railroad labor and management to subject Tier II benefits to income taxes, with the proceeds thereof being paid into the railroad retirement account (see Joint Statement at 17-18), would not be fully implemented by Sec. 108 of S. 1076. Rather, after 1988, the proceeds would be retained by the General Treasury. We do not perceive any justification for such a 1988 cutoff date (and none was given by the Director in his Statement). Both before and after that date, subjecting the benefits to income taxes will in effect constitute a benefit reduction which rail labor has joined rail management in recommending as part of their program for preserving the solvency of the railroad retirement account. No such cutoff date was provided in regard to the comparable provision in the Social Security Amendments of 1983 (Sec. 121) subjecting social security and Tier I railroad retirement benefits to income taxes, with the proceeds from the Tier I tax being paid into the railroad retirement account, and none should be provided as to the tax on Tier II benefits.

3. The Federal Role. OMB's program would include placing borrowing against the financial interchange on a current basis (Statement at 21; see pp. 24-27 supra) and transferring the source of the railroad unemployment compensation system's borrowing from the railroad retirement account to the general fund of the Treasury (Statement at 22), although the latter proposal is tied into a further proposal to terminate the railroad unemployment compensation system which, for reasons that already have been explained (pp. 8-17 supra), is not practical in regard to this legislation even if it should be desirable as a long-term goal. OMB would not, however, fulfill the commitment made by the Congress in 1974 to pay the full costs of windfall benefits out of appropriations from the general fund of the Treasury, and thus would not make up the shortfall in those appropriations during the 1975-1981 period. Rather, OMB proposes (Statement at 23) only to "[c]onvert the windfall into an annually appropriated entitlement," and in fact its bill apparently would return to the pre-1981 system under which windfall benefits would constitute a drain upon the railroad retirement account if authorized appropriations are not fully made (see pp. 33-34 supra). As we have demonstrated (pp. 31-34 supra), the joint railroad labor-management proposal in this regard (as in

others) is fair and equitable and otherwise fully justified both by the 1974 commitment made by the Congress and by the reasons for that commitment which still persist.

4. Application of the Railway Labor Act. Perhaps the most amazing proposal by OMB (Statement at 23) is to "[a]uthorize the parties to bargain collectively rail pension issues along with other compensation questions under the Federal Railway Labor Act." Director Stockman asserts (Statement at 19) that this "would help remove the Federal government from interferring in private sector negotiations and prompt resolution of all compensation matters concurrently."

This concern by OMB and its Director for removing "the Federal government from interferring in private sector negotiations" can hardly be reconciled with their opposition to the joint railroad labor-management program which has resulted from "private sector negotiations." OMB not only has proposed tax increases and benefit reductions not agreed to in those negotiations, but even has opposed the agreed-upon timing of any tax increases which timing is intended to permit them to be taken into consideration "along with other compensation issues" in the next round of collective bargaining upon new national wage and rules agreements. See pp. 22-23 supra. Moreover, while placing railroad industry pension issues in the realm of collective bargaining might have had merit as an original matter, it would not be consistent with the existing statutory system.

We had assumed that OMB proposed to subject bargaining upon railroad labor-management proposals to the Congress for new railroad retirement legislation (such as the proposals that are embodied in H.R.

1646) to the formal requirements of the Railway Labor Act (45 U.S.C. §§ 151 et seq.), since the existing legislation obviously can be changed only by the Congress. Such a proposal would have raised severe constitutional and practical difficulties, but we see no need to discuss them now as the bill intended to implement OMB's proposals reveals that this proposal in fact is all rhetoric and no substance. As expressed in Sec. 207 of S. 1076, it would merely "authorize[]" the Railroad Retirement Board "to administer any retirement benefits agreed upon by the parties under the Railway Labor Act for which the parties provide the necessary financial resources (including administrative costs)." In effect, therefore, the proposal would authorize the Board to administer supplemental pension plans agreed to in collective bargaining under the Railway Labor Act, if requested and paid to do so by the parties.

Supplemental pension plans already are bargainable under the Railway Labor Act and thus may be adopted by collective agreements between carriers and organized employees subject to that Act. Elgin, J. & E. R. Co. v. Brotherhood of Railroad Trainmen, 302 F.2d 540, 543-544 (7th Cir. 1962); see Chemical Workers v. Pittsburgh Glass, 404 U.S. 157 (1971). But supplemental pension plans, of course, cannot replace or alter statutory benefits and taxes, and thus are not a satisfactory alternative to legislation revising the railroad retirement statutes. Such supplemental plans can only add to the statutory benefits and to the carriers' labor costs, and do not permit adjustments such as would be made by the joint labor-management recommendations reflected in H.R. 1646 if enacted by the Congress. Authorizing the Railroad Retirement Board to administer a supplemental pension plan if one should be adopted, if requested and paid to do so by the parties, might be harmless but it also would be ineffectual. Supplemental pension plans still would not be a realistic alternative to legislation revising the railroad retirement statutes.

C. Other Comments

It would inordinately lengthen this analysis to attempt to respond to all the comments by Director Stockman in his Statement that we regard as mistaken. There are two other comments by the Director, however, which while not one of the major themes stressed in his Statement or directly reflected in OMB's program, seem significant enough to call for some response.

1. Section 22 of the Railroad Retirement Act. As has already been noted (see pp. 7-8 supra), § 22 provides that the Railroad Retirement Board, in the event it predicts a future deficiency in the railroad retirement account, shall so report to the Congress; that railroad labor and management shall jointly or separately submit proposals for preserving the solvency of that account and the President shall also submit his recommendations; and that if the Congress does not take corrective action Tier II benefits are to be reduced in accordance with regulations issued by the Board. While H.R. 1646 as introduced mistakenly would have repealed § 22, the joint labor-management program would retain the features of that provision calling for reports by the Board to the Congress and proposals or recommendations for corrective action, and that mistake was rectified by the House Energy and Commerce Committee in reporting out the bill. The provision regarding reduction of Tier II

benefits would be eliminated because of its inconsistency with other aspects of the joint labor-management program. See Joint Statement at 35-36.

Director Stockman says (Statement at 7) that the "Administration strongly opposes any tampering with Section 22 since this is tantamount to tampering with the social security benefit guarantee." But nothing in § 22 itself guarantees payment of social security equivalent (Tier I) benefits if money is not available to pay those benefits; it merely would first reduce Tier II benefits. The joint railroad labor-management program, on the other hand, is intended to assure payment of both Tier I and Tier II benefits, and thus to avoid mandatory reductions in any railroad retirement benefits because of insufficient funds. There is every reason to believe that it will succeed in resolving the financial problems of the railroad retirement account (see pp. 17-22 supra), but if it does not the revised § 22 will assure that the Congress is alerted by the Railroad Retirement Board well in advance and can take corrective action in the light of proposals by railroad labor and management and by the President. Indeed, that procedure is similar to the procedure adopted by the Congress in the Social Security Amendments of 1983 (Sec. 143) in the event that deficiencies in the social security trust funds should be projected at some future time. See Joint Statement at 36.

2. The Railroad Unemployment Insurance Wage Base. Under § 8 of the Railroad Unemployment Insurance Act, the contributions or taxes payable by the railroads are fixed by the Railroad Retirement Board for a calendar year at one of various levels ranging from 0.5% to 8% of taxable

compensation, depending upon the balance in the railroad unemployment insurance account as of the September 30 preceding the calendar year. That tax rate is now and for some time has been fixed at the maximum 8% rate. Taxable compensation -- the wage base -- is subject to a maximum of $400 a month, which is equivalent to $4800 a year.

Director Stockman notes (Statement at 13) "that the maximum monthly earnings subject to rail UI tax has remained frozen at $400 since 1959," and asserts that this is "[o]ne reason for the underfunding of" the railroad unemployment insurance system. In making that assertion, the Director has ignored the fact that the taxes paid are determined by a combination of both the tax rate and the taxable wage base, and thus can be increased by increasing one without increasing the other. For example, P.L. 94-92 in 1975, while not changing the $400 monthly wage base, doubled the maximum tax rate from 4% to 8% of that wage base and thus in effect doubled the maximum railroad unemployment insurance taxes payable. 89 Stat. 463.

Moreover, the Director apparently is unaware that there is a good reason for maintaining the monthly wage base at the $400 level while increasing railroad unemployment compensation taxes, when necessary and otherwise appropriate, by increasing only the maximum tax rate. The function of the wage base is not limited to the role it plays in determining the amount of taxes or contributions to be paid. For example, under § 3 of the RUIA an employee cannot qualify for benefits unless his taxable or creditable "compensation will have been not less than $1,000 with respect to the base year . . . ." Thus, under the $400 monthly maximum, an employee must have worked for approximately two and one-half months in the base year in order to be eligible for unemployment benefits. If the wage base had been doubled to $800 a month in 1975, rather than the maximum tax rate being doubled, approximately five weeks of work would have been sufficient to qualify for unemployment benefits. Since that (and certain other similar effects from changing the wage base) was not intended by railroad labor and management in recommending the 1975 amendments or by the Congress in enacting those amendments, the simple solution which they adopted was to leave the wage base unchanged while increasing taxes through increases in the maximum tax rate.

D. Conclusion

For these reasons, the National Railway Labor Conference on behalf of its member railroads submits that Director Stockman and OMB have not advanced any valid grounds for rejecting the program for preserving the solvency of the railroad retirement system that has been jointly recommended to the Congress by railroad management and labor. We are hopeful that the Director and OMB will reconsider their position, but even if they do not the joint railroad labor-management program should be enacted by the Congress without significant change.

Mr. Pease [presiding]. Thank you very much, Mr. Hopkins.

I appreciate the testimony of all our witnesses, and now we will turn to questions.

Mr. Hance, did you have any questions?

Mr. Hance. You know, in listening to this testimony, I guess the problem goes back to three areas over the last 20 or 30 years. You simply lost a lot of employees that worked for the railroads. Is that one of the big problems?

Mr. Hopkins. Yes, sir, it is.

Mr. Hance. You did not anticipate that 20 or 30 years ago that there would be this few employees working for railroads. You could have foreseen it, but you did not foresee it at that time. I guess you all agree on that.

Then there are the COLA's. One of the problems we have had not only in railroad retirement but also in social security, is that the COLA increases have been larger than the wage increases. You had wage increases that were not bringing in as much money to the retirement fund as you were paying out in COLA's. And then, of course, there is the problem of high unemployment.

I was figuring up that under tier I and tier II with the new taxes, in 1986, the employers are going to be paying 22.4 percent, tier I and tier II taxes, and the employees will be paying in 11.4 percent.

Yet when you talk about it coming unraveled, I don't really see any problem though I bet that 11.4 percent was hard to sell to the employees, wasn't it, Mr. Berge?

Mr. Berge. Yes, I agree with you, sir, and I think that with the tax proposal since H.R. 1646, it is my personal opinion that we have reached the maximum that the employees can be asked to participate.

Mr. Hance. When any employee is paying in as much as 11.4 percent, that is quite a bit out of the check.

Mr. Berge. I agree.

Mr. Hance. And you probably have some younger employees that are wondering if they are ever going to get anything back.

Mr. Berge. I am sure that the younger employees looking at the condition of the system now, the tax increases, are asking themselves some questions: Is there going to be something there for me when I reach retirement age?

Mr. Hance. Mr. Dempsey, Mr. Hopkins, at 22.4 percent, it would be difficult to get the railroads to raise their contribution. By 1986, your share will be 22.4 percent. I imagine that was difficult for the railroads to swallow, wasn't it?

Mr. Hopkins. Yes, sir; indeed, it was. That is really the saturation point and almost beyond the industry's ability to pay.

Mr. Hance. With the shape the railroads are in, I really don't see how they can do it. And I agree with Mr. Berge, the problem with the employees, is that this is about as far as you can ask them to go.

On the benefits, on page 7 of Mr. Berge's testimony, you summarized the recommendations as encompassing three major categories the first of which is selective adjustment benefits. The second recommendation is an increase in taxes. Did you cut benefits comparable to the increase in taxes?

Mr. **Berge**. I believe the benefit adjustments exceed the tax adjustments, and the reason for that is that we realize that the current employees can only be asked to go so far. The retirees should be required to participate in this to some degree, also.

So, we did agree to some very substantial benefit adjustments.

Mr. **Dempsey**. Mr. Hance, I wonder if I could supplement what was said in response to you. You mentioned the condition of the industry, and that is a relevant point, I think. By way of an order of magnitude here, the OMB proposal would cost the industry an additional roughly $750 million a year.

Now, that is more than the industry made in terms of net profits in most of the years over the last decade. It simply is an impossible, insurmountable burden for us.

Mr. **Hance**. How many employees are with the railroads now compared to, say, the last three decades, 10, 20, 30 years ago? Can you give us those figures?

Mr. **Hopkins**. We can give them to you exactly, but I can give them to you approximately; 1½ million was the high in many years past—30 years ago—and the latest figure we have is from March of 1983, and that figure is 388,000. And, as was mentioned by Mr. Berge, that level has gone down from an employment level in excess of 500,000 just a relatively few months ago.

Our employment has dropped 25 percent in the last 18 months because of the recession. But over the long term, it has dropped from 1½ million to below 400,000.

Mr. **Hance**. It does not take a Phi Beta Kappa to figure out the problem.

One other thing: On the 60/30 benefit, Mr. Berge, you all have agreed that if a person retires at 60, he or she will get a flat rate until 62, with no COLA's. At age 62, what happens?

Mr. **Berge**. At 62, they would get the same that they would get if they were covered by social security. There would be that age reduction corresponding to the age reduction in social security. An employee retiring at age 62 under social security takes approximately a 20-percent cut in benefits. That would follow through in our tier I.

Mr. **Hance**. About the same?

Mr. **Berge**. Yes.

Mr. **Hance**. And the tax is pretty close to what we are dealing with at social security?

Mr. **Berge**. The tier I tax is identical to the social security tax.

Mr. **Hopkins**. But the tax on the tier II benefits goes well beyond that. It has no threshold. The total amount is taxed at the income tax rates, depending on the individual's tax bracket.

Mr. **Hance**. Do very many of your employees, Mr. Berge, supplement their income?

Mr. **Berge**. I think it is fair to say that some do. There are some that engage in moonlighting, but particularly the members that I represent are not in a position to do that because oftentimes they are away from home during the workweek. They are not in a position where they can have a supplemental job.

Mr. **Hance**. What is the average wage for the average rail worker today?

Mr. **Berge**. I beg your pardon.

Mr. HANCE. What is the average wage for the average rail worker today?

Mr. BERGE. I would expect the average—and maybe Mr. Hopkins can answer this more accurately than I can—is a little in excess of $10 an hour.

Mr. HOPKINS. Yes, but taking all factors into account, it would be on the order of $30,000 a year.

Mr. THOMAS. That is the average wage?

Mr. HOPKINS. Yes, sir. Average annual earnings.

Mr. HANCE. Of course, 20 years ago, if you had told me they were making $30,000, I would have thought they were rich. Now, if they are making that, they probably are having trouble paying some of their bills.

I appreciate you all being here. I tell you this is a mess. I kept thinking there might be some easier way. I don't know. If we could expect 1,500,000 employees for railroads in the next few years, it would be easy to decide.

I thank you, Mr. Chairman.

Mr. PEASE. Mr. Moore?

Mr. MOORE. Thank you, Mr. Chairman.

Gentlemen, I want to first compliment you for trying to work together to come up with a program. Increasing taxes and reducing benefits is not an easy thing to do for management and labor. You are to be commended for that.

The subcommittee on which I serve will deal with the employment compensation benefits, so I will restrict my questioning to that.

First, according to the information the staff has shown and given me, the $1.8 billion deficit in the unemployment compensation fund by 1988 is not by this staff's definition a pessimistic scenario. Quite the contrary. It is a high employment scenario and under that, by the year 1988, your interest payments would be $124 million, and your income would only be $123 million. You wouldn't even have the money to pay out the benefits. You would not be able to pay the cost of running the system.

Now, I understand that you did not have time to work out between labor and management a suggestion to the Congress on how to take care of the situation. What concerns us is the fact that, as you indicated a moment ago, in the past we have had abuses of the employment compensation fund by the States. We think we have ended those abuses in 1981, and we don't want to see the same thing begin here. This is what is concerning us, the fact that we give you the authority to borrow, and you will have to borrow immediately a substantial sum of money with no prospects of repaying that money, and, according to the bill, without even paying interest.

Let me address that question first. Does the package between labor and management intend—and you, therefore, have no objections to us redrawing this language and making it clear—that you intend to pay the same interest that a State would pay?

Mr. DEMPSEY. Mr. Moore, you don't have to redraw the language. Section 302(a) of 1646 provides:

> Advances made to the railroad unemployment insurance account from the Federal unemployment account pursuant to this section shall be repayable including in-

terest at the rate payable for advances to accounts of States under section 1201 of the Social Security Act in the manner provided herein.

Mr. **Frenzel**. Can you tell us what the manner provided herein is?

Mr. **Dempsey**. Well, that is the entire mechanism. I can't. It is very complicated.

Mr. **Frenzel**. There is no enforcement or mandate, nor any way which one would pay that.

Mr. **Berge**. This is because of the tie-in to the FUTA.

Mr. **Frenzel**. We would just like to fix it up.

Mr. **Hopkins**. We did not propose that it be tied into the FUTA. Maybe that is a wise thing to do, but maybe it is not, because it does entail a lot of complications. The labor-management package proposed that the borrowing be from the general treasury so that we would not be entangled in any of the practices, regulations, or whatever they may be, that are entailed in the FUTA system.

Mr. **Moore**. Well, we don't think that is a good idea. I think H.R. 1646 was wise to that extent not to go that route, but the point is that you say you are going to pay interest, and I see this on page 33 in the bill. Page 32, you exempt the conditions regarding repayment, which is the mechanism of how you are going to repay it.

Mr. **Hopkins**. We did not do that, sir. I believe that is another example of the complications that arise in tying it into FUTA.

Mr. **Moore**. Do you have any objection to us then seeing to it that the same conditions and requirements, not only as to the interest and how it will be repaid, will apply to any borrowings that the railroad compensation system makes?

Mr. **Hopkins**. We would not have any objections to applying exactly what exists now with respect to the borrowings that exist now on the part of our borrowings from the UIUA.

Mr. **Moore**. That is what we are talking about. This bill proposes to treat, and the language says, to treat your ability to borrow as a State would borrow, except you take out of there all of the teeth for making a State repay. And so what I am saying is, if you are in good faith, and you intend to repay this money and not be like some States we have had problems with in the past, then you should not object to us removing this exception and seeing to it you are subject to the same rules and regulations and teeth in repaying the loan to the Federal Employment Compensation Fund as this bill purports to say you are.

Mr. **Hopkins**. I'm not saying that we object to having teeth with respect to repayment. As to whether that would work, I am just not in a position to say, because I don't know how that works with respect to the States.

Mr. **Pease**. Would the gentleman from Louisiana yield?

Mr. **Moore**. Certainly.

Mr. **Pease**. I don't know why the exemption was put in there except for the mechanics for insuring collection from the States involve a surcharge and existing Federal tax on employers. Clearly, that would not be applicable in this case. So, I think the witness is saying that they would not object to teeth of a similar sort, but that would be appropriate to the railroad industry.

Mr. **Moore**. Well, the gentleman is totally correct. The two programs are exactly alike. That may be what I am getting testimony from the witnesses before the committee; I just want to be sure when your subcommittee sits down to draw it, that I am not misunderstanding the intention. If the intention of these folks is to pay the money like a State would pay it back, as far as the comparison is practical, then we have no problems; we will redraw this to make that clear, and that is the only point I am trying to make.

The second point I would make is the fact that we do have a long-term problem with the Unemployment Compensation Fund, one that causes us, I would hope our subcommittee, to see to it that this does not drag on. Just like a lot of States in the past never really intended to pay off their borrowings. That was just a permanent way of financing the unemployment compensation benefits, and we have changed that in 1981. Now, they must do certain things to repay it.

I would like to see us place the same conditions upon you which I understand you intend to address, anyway, within the next year or so, to sit down and try to find a way between management and labor as to how to address this. So, I would hope that our subcommittee would limit to no more than a year your ability to make these loans in order to keep the pressure on you to come up with a solution.

Otherwise, you may fall into the same trap that some States have fallen into in the past, and that is just keep making the loans. In your case—we know in your case you can't repay those loans. The current tax structure for unemployment compensation, there is no way to repay them.

Mr. **Hopkins**. The last figures that I saw show that the Federal-State unemployment system is under water to the extent of almost $17½ billion.

Mr. **Moore**. Well, we have been trying to correct that. We don't want to have any more of it. That is what we are trying to stop now.

Mr. **Hopkins**. So far as we are concerned, we don't want to drag our feet; in fact, every reason to do the opposite of that, to move with all reasonable expedition to deal with a problem to the extent we have a problem.

Mr. **Moore**. Thank you.

Chairman **Pickle**. Mr. Pease?

Mr. **Pease**. Thank you, Mr. Chairman.

Could anybody in the panel tell me what the assumptions are about employment levels in the railroad industry that are built into this package? You say you have 388,000 employees now. It is scheduled to go back up to 500, to level off at some lower figure.

Mr. **Hopkins**. The assumptions are what we have called the A assumptions, because there have been several. They are assumptions that were adopted by the technical people, the Chief Actuary of the Railroad Retirement Board.

We can provide that, or I can read them off to you, but it assumes for 1983 that the average employment for the full year will be 385,000, and then it declines gradually thereafter, bottoming out at 340,000, I believe. That is a very pessimistic set of assumptions, I might say.

Mr. Pease. Yes. You are not assuming the assumptions on average employment for future years in any case goes above 385,000; is that correct?

Mr. Hopkins. That is correct, sir.

Mr. Dempsey. Mr. Pease, if I could just illustrate why that is so terribly pessimistic. It assumes that next year, in 1984, there will be significantly less average employment of the industry than this year in 1983. That, in my personal judgment, is entirely unrealistic. We are in the midst of a depression. We have suffered a 25-percent loss in our employment, and it is not possible for us, provided that the economy continues to come out to run this railroad with fewer employees than we have now.

We are down to the very bone at the present time.

Mr. Pease. I am happy to hear you say that, because I am really puzzled that the assumptions would be that low. In some industries, for example, the auto industry, with which I am familiar, people assume that even as the economy recovers, the auto industry will use more robots, and that even if production increases to where it was before, there will not be a comparable number of employees.

Mr. Dempsey. One can make that argument. In fact, let me put it this way. That is a relevant consideration in projecting employment trends in our industry as well. We have all kinds of technological improvements that go on all the time for the long run, and, therefore, I think it is unacceptable to use even these pessimistic assumptions, because that is what we want so that we are sure the system is fixed. But in the short term, we can't possibly do enough in the way of technological change to make these assumptions work out.

Mr. Pease. Regarding the reduction in benefit levels, the GAO witness made reference to postsecondary education as being different in the railroad industry than they are currently under social security.

Is that discrepancy addressed in this current bill?

Mr. Hopkins. It is my understanding it is. It was our intention to treat those postsecondary education benefits the same way for the purposes of railroad retirement and social security.

Mr. Pease. The tax on benefits, tier I benefits, where does that revenue go? IRS collects it. It goes into the general fund. Is there a transfer made to the Railroad Retirement Board?

Mr. Hopkins. The reason I hesitate, sir, I don't think that is altogether clear in the bill, whether it goes to the railroad retirement account, and there unaffected by the financial interchange, or whether it does not. That was our intention.

Mr. Pease. Under the social security bill that passed just recently the money collected in taxes on social security benefits does go into the social security trust fund. Wouldn't you assume that that would be fair in your situation as well?

Mr. Hopkins. I could not hear the last of that, sir, but we had assumed that the tax on tier I, the revenues thus derived would go into the railroad retirement account, and certainly we intended that the tax on the tier II benefits could be transferred to the railroad retirement account.

I am told that the language is not altogether clear, so that is why I hesitated to respond, because I can't, in any categorical way, in terms of what the bill provides.

Mr. PEASE. What about the taxation on tier II benefits? Are all tier II benefits subject to Federal income tax, or as in the case of State and Federal pension systems versus the amount of benefits taxable only after the employee has recovered what he or she put into the system?

Mr. HOPKINS. The latter is the case. It would be taxed after recovery of what the employee has contributed, but otherwise it is all taxable.

Mr. PEASE. I gather that the bill you are talking about does not address the specifics of the unemployment compensation system?

Mr. HOPKINS. It does not address it at all, sir. The only way it deals with RUIA, as we call it, at all, is to transfer the borrowing authority from the railroad retirement account to the general treasury.

Mr. PEASE. I see.

In case we do get into that, I would like to ask you one question. Unemployment benefits for railroad workers are paid at the rate of $25 a day if I understand correct?

Mr. HOPKINS. That is correct, sir.

Mr. PEASE. If a worker is unemployed for 1 or 2 days, or 3 days or 4 days, he gets paid $25 a day, as opposed to the Federal system where there is a waiting period, where you get paid for the week or the month, or so on. Is there some connection between that daily payment system and the way railroad workers are paid in salary or wages?

Do you know the historical basis for that system?

Mr. DEMPSEY. The question is, I take it, is there something unique about the method of compensating railroad employees that could account for this difference in the two systems?

Mr. HOPKINS. I think there probably is with respect to particularly what we call the operating employees in the industry that do not work with the regularity in terms of hours or days per week, as is generally the case in industry generally.

I think, though I can't say this with assurance, because I am just not that conversant with the history, but I think that may have some bearing on the fact that our railroad people are paid 10 days' unemployment out of a registration period of 14 days, which is the equivalent of 5 days a week.

Mr. PEASE. Thank you very much.

Chairman PICKLE. Before we leave this point, and I recognize you, Mr. Anthony, next, but I want to ask the gentlemen this question.

Mr. Moore raised a question a minute ago with respect to the repayment that we should—we move that part of the section that relieves the retirement fund from having to repay that money.

My question to you—and Mr. Pease entered into the same discussion—my question to you, while you did answer that you have no objection to trying to avoid the interest and repayment, how would you feel about a specific tax provided in the bill that says in the event that you do borrow from the unemployment fund of the States, and if you don't have the money, that you will then be taxed a certain amount, either employer or employee, or some form? How would you feel about putting that in the bill specifically now?

Mr. HOPKINS. I would sure like to hedge on that, sir. I'd want to see it, but if it comes down to something that would provide assurance that the amount would be repaid with interest, as a matter of principle, we would have no objection to that. But the reason I hedge, it is that I think it would need to be looked at in terms of how it would tie into the mechanism of the State and Federal system. But, as to the principle of repaying the amount with interest, on that we are not trying to escape it.

Chairman PICKLE. I am trying to be a little bit more specific. In the event that you don't, there would be a tax of point one, two, three, four, and then you know it would be repaid.

Mr. Berge, do you have any feeling about that?

Mr. BERGE. I would object to any tax on the employees, sir, because, as I said——

Chairman PICKLE. Would you have any objection if the employer paid it?

Mr. BERGE. I would make no objection to the employer paying it.

Chairman PICKLE. Would you if he would?

Mr. BERGE. Yes.

Mr. HOPKINS. You have finally driven a wedge between us.

Chairman PICKLE. We are not going to address that question now, but at some point it may well arise, and you might not have the privilege of being Alfonso and Gaston. We may have to consider that together.

I am not trying to make that as a recommendation.

Mr. Moore?

Mr. MOORE. Well, I think your idea is a good one, because the more I think about it, I think Mr. Pease is correct. The mechanism we have in the unemployment compensation law requiring payment just really would not apply here, and I don't know what mechanism we would have except some kind of standby tax to see that it is paid by a certain time.

Chairman PICKLE. We are trying to say, what do we do? We have reached the point of consideration. We are not trying to rewrite your bill, but we can't deal in hopes or fantasies.

We have got to do more than we have done at this point.

Mr. DEMPSEY. Mr. Chairman, we are prepared to work with you and your staff. We are in agreement with you. The mechanics may be complicated to work out, but as long as we are put in essentially the same position as everybody else in the United States, that is all we are asking for.

Chairman PICKLE. Well, the specific question really falls more appropriately in the Public Assistance Subcommittee. I don't have that jurisdiction, but we have to work jointly and try to find some kind of solution.

Mr. Anthony, do you have any questions?

Mr. ANTHONY. I noticed on page 39 of the testimony that was submitted by Mr. Dempsey and Mr. Hopkins that there was no position taken in regard to section 410 which relates to a commuter railroad. I have a few questions concerning this.

It is my understanding that there may be a cost of about $15 million annually to a reduction of tier II taxes on these commuter rails. Do you disagree with that figure? Would it be more or less?

Mr. HOPKINS. That strikes me as correct. I don't have it in front of me, but that strikes me as correct.

Mr. ANTHONY. If we have a section in the bill that costs money and treats certain components of the industry better, and then we are here because we are broke, why don't you take a position on it? What are the hidden politics that say you can't take a position for a special break for a particular group that is going to cost money when you are asking us to bail the system out?

Mr. HOPKINS. I don't know that we can't, but we haven't. It is not part of the labor-management package.

Mr. ANTHONY. Was it part of the labor-management package?

Mr. HOPKINS. No, it was not. It is in the bill, and all we can say on it is we take no position on it.

Mr. ANTHONY. So that means that you would not take a position on anything that is outside of the labor-management agreement that Congress decides to put in there.

Mr. HOPKINS. No, sir. I think that is clear from some of the colloquy earlier today. There are some things that we would take a position on.

Mr. ANTHONY. What is the rationale of that position?

Mr. HOPKINS. Since it is not a piece of our package, I guess I am not the best one to be stating the rationale, but since you have asked me, I suppose the rationale is that those commuter authorities that were required to acquire portions of the former Conrail system are in some kind of financial straits, and that they should be relieved of some part of what would otherwise be the total burden of the full railroad retirement employer tax.

I say that as a rationale, not our argument in favor of it, because we have no position.

Chairman PICKLE. Would the gentleman yield?

Mr. ANTHONY. Yes, sir.

Chairman PICKLE. Neither of you agreed on this commuter tax provision. How did it get in the bill?

Mr. DEMPSEY. We did not draft the bill, Mr. Chairman.

Chairman PICKLE. I am asking you, how it happened to end up in this bill?

Mr. HOPKINS. That is the way it came out of the subcommittee that dealt with it originally.

Chairman PICKLE. Then it favors some section of the country, or some congressional district. Is that basically correct, at the expense of the general treasury?

Mr. HOPKINS. Well, it favors those commuter authorities.

Chairman PICKLE. Would your question, Mr. Anthony, be to ask them, would they take a position on it, and they said they did not take a position on it?

Mr. ANTHONY. Mr. Chairman, a small part of the testimony has perplexed one member of the Social Security Subcommittee. We have a piece of legislation that everybody is working on together to save us money. We have a special break that costs money, and find that all of the parties that have been negotiating it say they don't have a position on this piece of legislation. I found that to be somewhat disturbing, especially in light of the fact that we are going to have to resolve some of these conflicting and competing claims.

I also noticed there wasn't anything from Arkansas written in there, either. It seemed to be Metro North Commuter Railroad. We are not going to even have any railroads going through Arkansas. We are getting ready to take up tracks here and there. We really are having a terrible time. So, when you start talking about the overall problems of unemployment having dropped 25 percent, I can tell you that my State suffers greatly from it because of service that has been provided.

So, when I am going to have to cast a vote that is going to indicate that it is going to take some general revenues to shore up the rest of it, I am going to be looking for some equity to be spread around here. That is the reason I asked the question, and I guess it means I will have to take a closer look at that long statement and see if there are any other sections in there where they failed to take a position, Mr. Chairman.

It is just disturbing to this one Member.

Chairman PICKLE. Well, it is obvious, if I understand what you are saying, Mr. Anthony, it is what the Commerce Committee or the gentleman before us has said, that the short-line commuter tax has not got a whole lot of reason for staying in this bill.

Mr. ANTHONY. I think I have made my point. I yield.

Chairman PICKLE. Thank you.

Let me ask you gentlemen: We have got another panel, and then one other individual. I want to announce at this point that Mr. David Stockman, Director of OMB, cannot be with us at 2, and that meeting is going to be delayed until 2:45, and we are also going to hold the meeting in B-318. That is in the Rayburn Building, just down below. I hope we can start right exactly on time.

I don't know what the delay is, but we have to move to B-318. All of you don't have to come this afternoon. That room is not very large.

I want to ask the two of you a question right now. Now, first, Mr. Berge, you stated, and management has pretty much agreed, that if we can pass this bill and the actuary said we might not have any problem now for several years ahead of us. And you have agreed on your approach. I said it in my beginning statement today that it concerns us on the joint subcommittees that under the agreement that we have a tab against the Federal treasury of in excess of $3 billion here in the next few years.

Now, if we take your agreement, if we were to endorse it, do you think the administration will accept it? Will the OMB and will the administration accept this bill as you have agreed on?

Mr. BERGE. I would hope they would, sir.

Chairman PICKLE. Do you think they will?

Mr. BERGE. Mr. Stockman has taken issue with some points of it. He has not taken issue with some points. As Mr. Hopkins said earlier, he does not think we have gone far enough. We think we have, and I would certainly hope that the administration would take a good look at it and realize that we have come a long ways.

It is a responsible piece of legislation, and it would be acceptable.

Chairman PICKLE. Mr. Hopkins, do either of you gentlemen venture that the administration will accept this bill?

Mr. HOPKINS. I can only echo what Mr. Berge has said. They have not so far. We would hope that they would for various reasons.

Chairman PICKLE. I hear rumors that they will not, and we are going to ask them this question. If they say no, then you gentlemen may have to go back to the drawing board, or else we then are going to have to make other proposals.

So, I am saying in a short period of time, if you want quick action, we have all got to come together in a further spirit of some accommodation, or else we won't get a bill at all. I think that is a fair observation that we can all make.

Now, let me yield ~~to Mr.~~ Thomas.

Do you have questions?

Mr. THOMAS. Just a couple questions for the record once again. Probably for Mr. Hopkins or whoever would want to respond regarding tier I and tier II retirement benefits. Tier I is going to be designed to be essentially equivalent to social security, and yet you want to hang onto the monthly wage bases that you currently have. Explain to me why it is not equitable that we go to an annualized basis on dollar amounts that are similar to social security on the benefit side and is going to be equivalent to social security?

Mr. HOPKINS. As a matter of principle, if we were starting from scratch, so to speak, either monthly or annual would be OK. The monthly has a historical background inasmuch as that is the basis on which a tax has been applied from the beginning of the railroad retirement system. To propose to change it now, and that has been proposed, of course, is the equivalent of increasing the taxes on the railroad industry. If we are going to increase taxes and the package and H.R. 1646 provides for tax increases, we say it should be done in a direct way as that bill proposes rather than in that indirect way which has the further infirmity of increasing benefits.

We think it would be anomalous at a time when we are doing everything we possibly can to curtail benefits as well as raise taxes that we adopt a measure that would have the effect of increasing benefits.

Mr. THOMAS. On the U.I. fund, similarly your wage base has been frozen. What is the rationale if you want to function like a State in borrowing money; that you don't have a wage base equivalent or similar to the way in which the States compute it?

Mr. HOPKINS. The amount of tax paid is a function of not only the wage base, but also the tax rate. The tax rate was changed. In fact, the maximum tax was doubled in the mid-1970's. At that time, it was decided and has been decided since, not to raise the base because that affects the eligibility of an individual to receive unemployment benefits. The act provides that for benefits an individual is not eligible until in the base year he has earned $1,000 or more.

So, if the base were raised, that would shorten the period of time that would take in order to become eligible for benefits. But, as I say, we did double the maximum tax rate in the mid-1970's. So, it has by no means been static in terms of the amount of tax actually being paid.

Mr. THOMAS. Lastly, Mr. Chairman, you had a rather strong reaction to my colleague from Minnesota's indication that there was a privilege in terms of your ability to borrow with no real ability—

that we can see under any kind of reasonable economic assumptions—your ability to repay.

Would you provide me in just a very short sentence or two what the world needs to look like for you to be able to repay your debts? What is going to happen to employment?

Mr. HOPKINS. In order to repay the debts, employment is going to have to recover and increase.

Mr. THOMAS. Does that run counter to the long-term secular decline in rail employment?

Mr. HOPKINS. It certainly does run counter to what has happened over the last 20 years.

Mr. THOMAS. Why is that going to go the other way, in your assumption?

Mr. HOPKINS. We hope that we have a revived and reviving railroad industry.

Mr. THOMAS. And if we do not, you would not be able to repay. Is that what you are saying?

Mr. HOPKINS. No. We had quite a discussion about this before, sir. There may be some other measures that would need to be taken. What we had emphasized, and I emphasize again, is that we are not proposing, and this package and bill do not contemplate, that we be forgiven any borrowings that we may make or that the system may make, or that we be relieved of any interest.

Mr. THOMAS. Certainly dealing with the bill we have before us, it is difficult for me to see in the bill at least any arrangement which requires you to repay. Obviously, we are going to have to provide an amendment to do just that, since you have indicated that that is your intention.

Thank you very much, Mr. Chairman.

Chairman PICKLE. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

This is most extraordinary testimony, and I am enjoying it a great deal. I want to get back to Mr. Anthony's question about the metro lines, who are going to have a 5¼-percent tax break.

Am I correctly advised that these are the Metro North Commuter Railroad Co., the New Jersey Transit Rail Operations, Inc., and a regional high speed lines division of Southeast Pennsylvania Transit Authority? Are those the three in question?

Mr. HOPKINS. That is my understanding, sir, yes.

Mr. FRENZEL. And do you agree that the cost of that special tax break is about $15 million, when it is fully implemented, that is, in 1984 or 1985?

Mr. HOPKINS. I have no reason to argue with that number, sir. I don't have the figures here in front of me, but that sounds correct to me.

Mr. FRENZEL. And if that goes, then the companies that you represent and the employees that you represent will have to pay more so that these people pay less. I could not believe your answer to Mr. Anthony, so I want to make sure you have ample opportunity to decline his invitation to comment on that.

You still have no position on that prohibition and intend to have no position?

Mr. HOPKINS. We have no position.

Mr. FRENZEL. Do you intend to have a position on it?

Mr. **Dempsey**. Not to my knowledge, but I am not sure that the point that Mr. Hopkins made before in response to Mr. Anthony was perfectly clear; it is perhaps not an easy one to grasp, but you can make an argument, obviously as Mr. Anthony does, against the provision on the merits.

You can also make an argument in favor of the provision on the merits, the rationale being that these are companies that the Congress forced to do something that they did not want to do, and that they therefore should not be penalized by having a substantially higher retirement tax than they otherwise would have.

Well, there are arguments running both ways, and we have not taken a position.

Chairman **Pickle**. Mr. Frenzel, let me suggest that we might go on to another question. This question is coming under the jurisdiction of the Social Security Subcommittee, and this chairman has some opinion on it, and we will be able to express it at the proper time.

Mr. **Frenzel**. The chairman gives me great assurance.

Mr. Chairman, Mr. Hopkins was talking about a 40-percent reduction in potential, 40-percent reduction in benefits. I assume you are talking about tier II benefits only?

Mr. **Hopkins**. Yes, sir.

Mr. **Frenzel**. And that the total reduction in benefits under circumstances you describe would be something less than 15 percent, is that correct, if you add tier I, tier II, and windfall, and whatever else is involved?

Mr. **Hopkins**. I'm trying to do a quick piece of mental arithmetic. On average, I think tier II represents about a third of the total of a typical individual's benefit, so it would be a reduction of 40 percent of one-third of the benefit if that relationship is correct.

Mr. **Frenzel**. Thirteen-and-some-change percent.

Thank you very much, Mr. Chairman. I yield.

Chairman **Pickle**. Before you gentlemen yield, let me ask you a few questions very, very quickly here. The GAO testified earlier this morning that we ought to set up separate social security accounts, tier I, tier II. Do you have a position? would you favor that we have separate accounts for tier I and tier II?

Mr. **Hopkins**. Again, I have to hedge, sir. I can see where they are coming from. There may be merits to it. I can see problems with it as well. For example, there is what we call unrecompensed tier I benefits—that is what we call them. Those are benefits that the railroad retirement system paid that have no counterpart under the social security system. So, in effect, those benefits are paid out of—not in effect—but they are paid out of the railroad retirement account. It is, in the nature of our judgment of these matters, a tier II benefit, but, in fact, it is an unrecompensed tier I benefit.

So, if one were going to consider that on that ground alone, there would have to be some interplay.

Chairman **Pickle**. Mr. Berge, do you have a position on that?

Mr. **Berge**. This morning was the first time that I ever heard of that, and we have not had time to take a position for or against it, but I do know that GAO did not give any reason for doing that except in the testimony they say that it would be easier to account for the difference.

Chairman **Pickle**. Yes. They were saying that would give us better accounting, and it would insure the integrity of the social security equivalent benefits, and you would know specifically what was being paid out on tier I and tier II; you would have a separate account. If you don't do it, you are going to just continue to obfuscate the picture.

I am trying to find a reason why you don't do it. If it does not hurt anything, and if it gives you a much clearer picture, why don't you do it? If you want a hedge, and you say you want to hedge, or you had it sprung on you for the first time this morning.

Mr. **Berge**. I am not hedging, sir.

Chairman **Pickle**. Mr. Hopkins hedged, and you expressed surprise.

Mr. **Berge**. Well, I had never heard of anybody considering dividing the fund up into separate accounts until GAO proposed it this morning. We will have to take a look at it.

Chairman **Pickle**. That is fair enough.

Would you do that and give us any further view that you might have on that?

[The following letter was subsequently received:]

HIGHSAW & MAHONEY, P.C.,
Washington, D.C., September 16, 1983.

Re: H.R. 1646; Public Law 98-76

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the June 3, 1983 hearings on the bills which were recently enacted as the Railroad Retirement Solvency Act of 1983 (P.L. 98-76), you asked Mr. Ole M. Berge to state Rail Labor's position on a suggestion of the GAO witnesses that separate accounts be maintained for Tier I and Tier II funds. At the time, Mr. Berge stated that he had not heard of the suggestion before that day and therefore could not state an opinion on it but would respond at a later time.

I am now informed that it is Rail Labor's view that the suggestion of GAO appears to be a purely administrative matter and therefore if you and your Committee and the GAO feel it would enhance the efficiency of the Retirement System Rail Labor will not object to it.

Sincerely yours,

WILLIAM G. MAHONEY,
Counsel, RLEA Committee on Railroad Retirement.

Chairman **Pickle**. Let me ask you on the question of accelerating deposits, and this would go primarily to management. The GAO recommended that you would accelerate the current deposit schedule for the railroad retirement.

Does management object to that?

Mr. **Hopkins**. We don't favor it. We object to it.

Chairman **Pickle**. You say you do object to it?

Mr. **Hopkins**. Yes, sir.

Chairman **Pickle**. Why would you object to that?

Mr. **Hopkins**. It costs money for one thing, at a time when we are trying to save every penny we can.

Chairman **Pickle**. Many employees over the country have to make their payment as much as eight times per month regularly. Even in the social security bill, we accelerated the payments by State and local governments.

Now, why is it that railroad management should not be governed by the same control?

Mr. HOPKINS. Well, it would have the same effect as a tax increase.

Chairman PICKLE. It would cost you some money. But I am asking you, why should you be separate and apart, why should you be excused from that requirement?

Mr. HOPKINS. Well, for one reason, the tax basis is different for railroad retirement than is true with all of the other employers. This involves the fact that we are on a monthly basis rather than an annual basis.

Someone who is much closer to the administrative details than I would probably make a much better answer than I. But there are problems with it in terms of administration and, of course, there are problems with taxing the industry.

Chairman PICKLE. Mr. Hopkins, any other statement you want to make about why it should not be accelerated? I am looking for the reason why you should not be considered the same as any other employees in the country?

Why should you be something special?

Mr. HOPKINS. GAO acknowledged that.

Chairman PICKLE. I understand why you would not.

Mr. HOPKINS. We will be glad to provide you something that says it better than I have.

Chairman PICKLE. Please do.

Now, on the annualized wage base, I have a question. GAO recommended that you go to an annualized wage base. My question to you is, do you approve of that or object to that?

Mr. HOPKINS. We object to that, sir.

Chairman PICKLE. And why?

Mr. HOPKINS. Because it has a same effect as a tax increase. In other words, it would cost more money above and beyond what it is already in this very substantial package and it would increase the benefits which would further——

Chairman PICKLE. Would not annualization result in better benefits for the employee?

Mr. BERGE. Annualization would result in increased benefits to the employees and also would result in increased taxes for employees.

Chairman PICKLE. My question is, do you favor annualization?

Mr. BERGE. I will have to admit at this point I don't have a position on it, sir, because we have not really looked into it to see whether the additional benefits justify the additional tax.

Chairman PICKLE. Mr. Berge, I am not angry, but I get distressed at you folks when you come to me and say you just don't have a position on the critical question.

The question of annualization may be one of the key factors to trying to solve some of these problems, and you say you don't have a position. And if you don't, then we may take a position.

Mr. BERGE. If you will permit me, sir, I will tell you why I do not have a position this morning, because it is something that we have not looked into in depth. We have spent our time on all the other facets of a system that everybody realizes is the most complicated retirement system in the nation.

Chairman PICKLE. Now, Mr. Berge, if we do not reach an agreement between management and the employee and there is not enough to bail out our problem, then you are going to have to look for some other approaches. The question of other annualizations and other considerations may have to be factors you look at.

Now, you have known that for years, not this morning, but for years, but you don't want to face it until you have to. And I am saying to you, you may have to.

Mr. HOPKINS. Chairman Pickle, may I just offer this added observation on that point. The program that labor and management worked out should not stand or fall on the basis of whether it is annual or not.

Chairman PICKLE. I agree with that.

Mr. HOPKINS. And we have known about the position for a long time. It is common knowledge but in determining just how we were going to go about raising enough money to save the railroad retirement system, we looked at other avenues and we came up with another accommodation that achieved the result that we were after and that was not among them.

Chairman PICKLE. I am not certain that that is the answer either, but it may be one consideration we have to look at.

I am real surprised that the labor would not be in favor of annualization. I would think that you would, and I am surprised at your testimony that you would not be for that.

Mr. BERGE. I did not say we would not be for it, sir. I said I did not have a position because I was not prepared to speak for labor on that question this morning.

I can speak for my own organization and we really don't have a strong feeling one way or another. I am sure that my members, if I explain to them that yesterday you are going to pay more taxes but you are also going to derive a bigger benefit, may very well say that it is fine.

Chairman PICKLE. Well, this is an issue we have got to consider.

I believe you indicated that was a problem a few years ago. You had testimony, and since that time, you got into the question of the pay versus earned issue. You have gone into court and it has not been settled.

You went to annualization, and that pretty much takes care of that problem, doesn't it? I think it is not something you just toss off and say it costs you money.

Mr. HOPKINS. If we were now negotiating and someone were to propose that we go annual, then our response to that might be, well, perhaps we could consider that if our tax increase otherwise was only going to be 2½ percent or 3 percent.

Mr. ANTHONY. Would the chairman yield?

Chairman PICKLE. I am not taking a position on it. I am in a somewhat tenuous position here. I am not trying to say either one.

We have joint jurisdiction and we have joint jurisdiction with the Commerce Committee between these two committees. I don't know who is going to pull this thing together but I am just saying if we don't reach an agreement with what has been proposed, then we may have to look in other areas and then we may, if you want, the hedging may stop in the next 30 days.

Mr. ANTHONY. Mr. Chairman, would you yield just for one moment?

I understand obviously because I would take the same position if I were in a management position since I would be trying to hold up the cost.

But from a policy and political standpoint, you must look at it from our perspective. We must cast our votes and then try and describe the social security and railroad system to a constituent who does not really want to understand either one of them. They just want both systems to be handled in the same manner.

When you try to explain that one system is operated one way and the other is operated another, you start running into a public policy problem. I think that is the reason why I was interested in hearing GAO's recommendations of tying the two systems as closely together as possible. Then we would take a hard look at both of them in the future, to make sure that they are solid.

At least we have some of the troublesome policy positions out in the open.

Mr. DEMPSEY. In principle, Mr. Anthony, we are in accord. Indeed, the two systems have been moving much, much closer and the differences now are not major at all.

The only problem is, is this the particular time to make that last choice? As Mr. Hopkins says, if you choose to do it, then we would want our tax bill portion of this bill to be proportionate.

Mr. ANTHONY. I yield back.

Chairman PICKLE. Our committee is privileged to have Chairman Ford with us at this point. He was not able to get here earlier this morning and will be with us again this afternoon.

I want to recognize Mr. Ford because we have shared joint jurisdiction of my subcommittee and his subcommittee.

Mr. FORD. Thank you very much, Mr. Chairman.

I would like to apologize to the witnesses for not being present this morning. I was in my congressional district and I have not read the statements yet. I will be reading them a little bit later this afternoon.

As the chairman of this Unemployment Compensation Subcommittee on Ways and Means, I am concerned about the UI system as it relates to the mechanism that we all can agree upon, hopefully, a repayment schedule. I don't know how we will work it out.

I will be working with witnesses and others in the coming weeks to mark up legislation for some type of relief.

Chairman PICKLE. Well, I thank you, gentlemen.

Thank you very much.

Now the Chair calls another panel.

Mr. O. W. Jacobson, Mr. A. T. Otto, Jr., and Mr. Andrew Ripp.

We have Mr. O. W. Jacobson. Which one is Mr. Jacobson?

Mr. JACOBSON. Right here.

Chairman PICKLE. Mr. Jacobson is the president of the Brotherhood of Railway Carmen in the United States and Canada.

Mr. A. T. Otto, and you are president of the Railroad Yardmasters.

Mr. OTTO. Correct.

Chairman PICKLE. And Mr. Andrew Ripp is the international vice president, International Brotherhood of Electrical Workers.

Mr. RIPP. That is correct, sir.

Chairman **Pickle**. In that order, then, we will ask you to proceed.

Mr. Jacobson, would you present your testimony first?

STATEMENT OF O. W. JACOBSON, GENERAL PRESIDENT, BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA

Mr. **Jacobson**. Thank you, Mr. Chairman.

I have submitted a statement. I would like to have that entered into the record.

Because of the time element, I would like to just stress a few points in that statement and then be subject to questioning after that.

I think when reading my statement, you note that I do have strenuous opposition to approximately three sections in the bill. The one that I can say that I most strenuously object to is the 60/30 provision. We feel that we bought that provision back in 1974 with 4 percent wage concession and we feel that it is up to the railroad to continue as they stated back in 1974, to continue to take care of the 60/30 provision.

It is my understanding from discussions with the Railroad Retirement Board as well as the RLEA people that if this provision is to go in to effect, it will mean approximately a 30-percent reduction in our benefits. According to the calculations which I have made on it and which we have received from different regions of the Railroad Retirement Board people themselves, it could mean as high as $270 to $300 a month in reduction in their pension benefits.

Chairman **Pickle**. Mr. Jacobson, before you go to the next point, I hear your point. That is a matter of jurisdiction in the Commerce Committee. Neither one of us have any jurisdiction over that question.

Mr. **Jacobson**. I see, sir.

Chairman **Pickle**. But it is in your testimony.

Mr. **Jacobson**. Yes, sir.

I don't quite understand what you are telling me. Are you saying that you don't want me to continue on as far as my objections with 60/30?

Chairman **Pickle**. You can go ahead and make whatever statement you wish. I am saying to you, from a congressional standpoint, neither of our subcommittees, the Public Assistance and Unemployment Subcommittee or Social Security Subcommittee, have jurisdiction over whether you change to 60/30. That is a matter that is under the jurisdiction of the Energy and Commerce Committee.

You can make any statement you want to and we will pass that on to that committee, but we do not have the right to change that age factor.

Mr. **Jacobson**. Thank you.

What my solution has been as far as the 60/30 issue is concerned is to place a gross ton-mile revenue tax to the effect that it would generate approximately $1.3 billion a year. And it is my understanding that the savings by the reduction in the 60/30 provision as stated in 1646 would mean a savings of $1.3 billion.

And so, as I say, my solution is to place a gross ton-mile revenue tax strictly to take care of the 60/30 provisions so there will not have to be any reduction in the benefits.

Chairman PICKLE. I thank you, sir.

Mr. JACOBSON. The second provision which I object to is the fact that they are going to place the 5-percent cap on the COLA. In other words, the tier I and tier II benefits, there will be a 5-percent cap on the COLA for the tier I benefits.

To get any COLA increase as far as the tier II benefits are concerned, your cost of living would have to rise over 5 percent. I do not think that this is fair as far as the retirees are concerned.

It is my own opinion that the COLA tax should apply equally on the tier I benefits as well as on the tier II benefits.

And third, I am against the provision which places a tax on the tier II benefits equal to IRS taxes which will go back into the fund.

Now, I personally have paid in to that fund from 1939 up to the present time. From 1939 to 1974, I paid a tax equal to what the railroad paid. From 1974 to 1981, we did not pay a tax on tier II benefits. But from 1981 to the present time, we, the employees, are paying a 2-percent tax on that.

We have already paid income tax on those benefits and I do not see that we should have to pay another tax on them. The only time we did not pay income tax was between 1974 and 1981.

What I am saying is in the 44 years that I have under these railroad retirement funds or the railroad retirement benefits, I have paid Federal income tax on approximately 37 years of the railroad retirment tax that I paid into the fund. I do not think it is fair that I have to pay another tax on it.

Those are the three points in the bill which I am opposed to. As far as the rest of the bill is concerned, I support the action of the Labor Management Committee and I want to thank you for the opportunity to be here.

Chairman PICKLE. I thank you. Your entire statement will be made a part of this record.

[The prepared statement follows:]

STATEMENT OF ORVILLE W. JACOBSON, GENERAL PRESIDENT, BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA

My name is Orville W. Jacobson. I am General President of the Brotherhood Railway Carmen of the United States and Canada, which has a membership of 90,000. We represent some 25,000 retired members.

I am intimately acquainted with the railroad industry and with the problems of its employees. For the past 44 years, I have been actively engaged in railroad employment and the Railway Labor Movement, particularly with regard to the carmen craft, which I now represent. Since my father was a carman and other family members have been employed in the railroad industry, I have literally known railroading all my life. For the past 24 years, I have served in various capacities as an elected representative of the Brotherhood Railway Carmen of the United States and Canada. Those positions have included General Chairman of the Great Northern Board; General Executive Board Member; General Vice President; Assistant General President and my present office as General President. My activities have included vigorous participation in the efforts of the Railroad Labor Executives' Association.

I am presenting this statement in strenuous opposition to certain provisions of H.R. 1646, a Bill introduced by Congressman Florio to amend the Railroad Retirement Act. The Railroad Retirement system is unquestionably in the most serious financial condition, a situation which urgently needs to be remedied. I am in agreement with a number of the provisions of the Bill designed to re-establish and maintain the solvency of the Railroad Retirement Fund into the future.

However, I must state in the strongest and most emphatic terms that certain provisions of the Bill are, to say the least, grossly unfair and place an unjustifiable burden on employees and retirees. Additionally, the future funding of the Railroad Retirement System from the contributions by the carriers is not in any way assured.

The most striking example of the objectionable aspects of the Bill is represented by the proposal to change the 60-30 provision, wherein an employee who has 30 years of service for Railroad Retirement purposes and who has attained the age of 60 is now permitted to retire with full benefits. Under the proposal contained in H.R. 1646, there would be substantial reductions in the Tier I benefits for any employee retiring at age 60 with 30 years of service. For such an individual, during the period of time between his retirement and when he reaches age 62 years, his Tier I benefits will be reduced by a factor based on the Social Security age reduction factor, which is estimated to be approximately 30%. What this means in practical terms is that an employee who retires at age 60 with 30 years of service (or who retires at any time between age 60 and the day he reaches age 62 with 30 years of service) will have Tier I of his railroad annuity reduced by 30%. For example, if the employee's Tier I benefit was $600.00 per month, the changes proposed by H.R. 1646 would take back $180.00 of that. For a married employee whose spouse was eligible for a pension, the spouse's pension would be cut by 50% of the amount the employee's Tier I benefits were reduced, or, in this case $90.00. Therefore, this family would lose $270.00 per month. After the employee attained the age of 62, under the proposals of H.R. 1646, the employee's Tier I benefits, and any spousal benefits, would be subject to reduction by Social Security's reduction factor for early retirement, which is a 20% reduction. Therefore, for the rest of his life, the employee now receiving a $600.00 per month Railroad Retirement annuity would lose $120.00 of that annuity and his spouse would lost $60.00 for a total loss of $180.00 per month for the remainder of their lives.

Apart from the severe hardship which these cuts will cause to retired employees and their families, I must emphasize that this proposal constitutes a serious breach of the commitments and understandings which formed the basis of the Railroad Retirement Act of 1974. The Railroad Retirement System was in a serious crisis at that time as well. In order to help save the system, the Nation's Railway Labor Organizations consented to a 4% concession in wages in order to better help the carriers to fulfill their obligations to fund the Railroad Retirement System into the future through carrier contributions. The major inducement offered to the employees at that time to accept this 4% wage concession in exchange for the carrier's commitments to finance the system was the 60-30 provision. The wage concession was absolutely dependent upon the industry's commitment to finance the system and the provision of 60-30 retirement. Now the 4% wage concession is still in place. In fact, the sacrifice made by employees in the 4% concession compounds itself with each new negotiated settlement. The employees are still keeping the bargain that was struck in 1974 but it is obvious that if the changes to the 60-30 proposed H.R. 1646 are passed that the employees will not be getting what they have paid for and what they will continue to pay for in the future.

In fact, the bargain has already been broken to a great extent because the industry has not fulfilled its undertaken obligation to fund the system. At the time the 4% wage concession was agreed to, the Railway Labor Organizations proposed that a provision be added to impose a revenue ton mile tax on the carriers in order to insure that the funding to back up their commitment to fund the system would be available. However, the tax on employers continued to be based upon the current level of railroad employment. It is common knowledge that Railroad Retirement has substantially decreased since that period of time, particularly in the past several years, due to furloughs and abandonment of facilities and services. This has resulted in a substantial reduction in employer contributions, thereby contributing to the difficulties of the fund. However, at the same time, the carriers have reaped a substantial financial advantage due to the 60-30 provision. Because those provisions were in place, the railroads were successful in inducing numerous employees to retire at an earlier age. This permitted the carriers to avoid the payment of substantial protective benefits to these employees which the carriers would have been required to pay upon involuntary termination of employment for many causes. Instead, by inducing the employees to retire early in reliance on the 60-30 provisions, the employers have received a windfall because they have not been required to make the protective payments. At the same time, the nation's carriers are actively seeking to further reduce rail employment by numerous mergers and combinations which have resulted in the displacement of innumerable rail workers and which will result in the displacement of even more in the future. It is obvious that when these trends in the industry are considered the current employer tax based upon existing levels of employment in the rail industry is completely inadequate.

In light of the foregoing, I strongly urge that a gross-revenue-ton-mile tax be imposed upon the carriers. Such a tax would not only insure that the carriers would fulfill the obligation which they undertook in 1974 to fund the system into future, but it would also furnish a most appropriate means of continuing to fund the 60-30 provision without any of the draconian reductions in those benefits proposed by H.R. 1646.

It has been estimated that if the proposed reductions and changes in 60-30 retirement are enacted, it would effect a savings to the Railroad Retirement

Fund of approximately $1.3 billion. A gross ton mile tax could easily produce an equivalent level of revenue. In 1981, the revenue ton miles carried over Class I railroads totaled 912 billion miles. If a ton mile tax was assessed against those miles hauled, it would require only a tax of approximately 1½ mills per ton mile to generate revenues equaling more than $1.3 billion per year. This would furnish a means of funding the 60-30 provision which is commensurate with the income of the carriers, and which is therefore fair to them, while preventing the carriers from avoiding their obligations to fund the system by reductions in the current levels of working forces. By this means, the 60-30 provisions could easily be left intact, as they should be, and a structure would be set in place which would insure that the carriers would fulfill the obligations undertaken by them in 1974 in order to induce the 4% wage concession which the employees are continuing to make. I cannot overemphasize how vital and essential it is for the foregoing recommendations to be adopted.

Some individuals, notably Budget Director David Stockman, appear to feel that the railway employees should accept these reductions in their benefits along with cutbacks which are being imposed on other programs in order to reduce the level of the federal budget. This kind of argument is utterly false and misleading. As anyone who has even the most minimal knowledge of the history of Railroad Retirement knows, the Railroad Retirement System has historically been financed by contributions from rail employees and the carriers. To suggest that Railroad Retirement benefits must be cut because the tax payers are tired of subsidizing so-called special benefits for the railway industry represents an inexcusable misrepresentation concerning the method of funding of the system or, at best, a complete lack of awareness of the details of that funding. The budget of the federal government has not in any manner been broken by the Railroad Retirement System. On the contrary, the current condition of the Railroad Retirement System can in large part be attributed to the abuses of the federal government in taking advantage of the Railroad Retirement Fund. For many years, the federal government has had the use of Railroad Retirement System funds in order to fund other projects at extremely and unconscionably low rates of interest, far below what the government would have been required to pay had these funds been borrowed in the open market. Further, the federal government is responsible for $1.8 billion which is currently owed to the fund as a result of congressional underfunding of dual benefits. In this regard, the history of dual benefits is of interest. In the 1950's, the Congress passed legislation to require the Railroad Retirement Board to pay such dual benefits despite the objections of both rail labor and rail management. Nevertheless, Congress did not furnish any means of obtaining revenues in order to pay those dual benefits. The resulting drain on the Railroad Retirement System ultimately depleted the Railroad Retirement Fund by $4 billion between 1951 and 1974 and brought about the crisis which required enactment of the Railroad Retirement Act of 1974. At that time, Congress apparently recognized that its imposition of the obligation to pay dual benefits on the Railroad Retirement Board was a primary factor in creating the financial crisis of the fund. Accordingly, the 1974 Act was designed to phase out dual benefits in the most expeditious means possible consistent with fairness and equity to those in whom such benefits had already vested. As part of the 1974 amendments, the federal government was given the responsibility to fund the payment of dual benefits, a responsibility which it properly undertook given that dual benefits were first enacted against the wishes of both rail labor and management. Yet the government has consistently and substantially underfunded the payment of dual benefits. Therefore, in order to comply with the law as enacted by Congress, the Railroad Retirement Board has continued to be required to dip in to the funds generated by employee and employer contributions in order to make up for the shoft fall caused by the government's abdication of its responsibilities as undertaken in 1974. Again, it should be noted that this lack of action on the part of the federal government has deprived the plan of $1.8 billion to date, a sum half a billion dollars in excess of the anticipated savings to be achieved by the improper proposed changes in the 60-30 retirement provisions. The foregoing should make it clear that the federal government has in no manner subsidized or sacrificed anything in order to maintain the integrity of the Railroad Retirement System. On the contrary, the fund has been depleted and ravaged in order to serve the interests of the federal government. The Railroad Retirement System is substantially paid for by rail employees and the carriers--not by the federal government. The current administration's craze to reduce federal spending is absolutely no justification for any reduction in the 60-30 retirement provisions.

In addition to the foregoing, certain of the proposals of H.R. 1646 are objectionable because they impose a burden of double taxation on employees with respect to Tier II benefits. First, active employees are being asked to increase their current Tier II employee tax contributions from 2% to 4.25% of taxable payroll over the next 3 years. I am not raising any objection to that Tier II tax, although it will be heavily burdensome to employees. Similarly, no objection is being raised to the tax which is proposed to be placed on beneficiaries for their Social Security equivalent benefit under the Railroad Retirement Act. However, H.R. 1646 also proposes that a tax equivalent to the tax on private pension equivalent benefits under the Internal Revenue Code be imposed upon Tier II benefits paid to beneficiaries. To my way of thinking this is a grossly inequitable example of double taxation. As set forth above, existing employees are being asked to pay increasing payroll taxes to fund Tier II benefits. Historically, active employees have paid substantial sums into the Railroad Retirement Account in order to fund Tier II benefits. The only time during which such employee contributions were not assessed in order to support Tier II benefits was the period from 1974 until 1981. Certainly, current retirees who have worked 30 years in the industry and paid assessments into the Railroad Retirement Fund to support Tier II benefits prior to 1974 and since 1981 have acquired a vested interest in that fund. It is clearly inequitable to ask them to pay a second tax on that fund by way of this proposed benefit tax. This double taxation cannot be justified by comparing railroad employees to those covered by the Social Security System. Persons under the Social Security System who have made substantial contributions to their own retirement have been permitted to do so through employer plans and no tax has been imposed on them during their employment years for the moneys contributed to those funds. Similarly, there is a substantial tax savings to employers who establish privately funded pension plans. Therefore, it may be that a tax on benefits such as IRAs and privately funded pension plans is appropriate because the employees covered by such plans have not been required to shoulder a tax burden in order to fund those particular programs during their working years. With respect to Tier II benefits, however, it is clearly set forth above that active employees have in the past contributed substantial amounts of money during their working years to support Tier II benefits and will be similarly required to make substantial contributions in the future. It is true that future employee taxes on Tier II will be treated the same as employee contributions under private plans if H.R. 1646 is passed in its present form but that does nothing to alleviate the gross inequity suffered by current retirees who paid the Tier II tax for all of their working lives without any corresponding benefit. To add an additional tax to their Tier II benefits when received after retirement is therefore completely inequitable and unconscionable. I strongly oppose this provision of H.R. 1646.

Finally, I am vigorously opposed to the provisions of H.R. 1646 pertaining to cost of living adjustments. Under the proposals of H.R. 1646, any future Tier I COLA adjustment up to 5% of the total of the individual's annuity will be used to offset Tier II benefits. This means that if the cost of living adjustment is less than 5%, the individual will in effect receive no actual COLA increase. Absolutely nothing would be payable as a COLA increase unless the COLA adjustment was in excess of 5%, and then the individual would receive a COLA adjustment only for the excess over 5%. Therefore, individuals could suffer a 7% increase in the cost of living but obtain only a 2% real increase in benefits. This is like saying, if you get paid every two weeks, you may receive no COLA. At best you will only receive COLA benefits on the first week's pay. This too is grossly unfair to existing retirees who have paid substantial amounts in employee taxes in order to support Tier II of the system.

In conclusion, may I state that I strongly support all reasonable efforts to restore and maintain the solvency of the Railroad Retirement Fund. I support many of the provisions of H.R. 1646 except as outlined above. It is, however, essential that the re-establishment of the solvency of the fund be accomplished in a manner which is fair and equitable to the employees involved and which does not establish the solvency of the fund at the primary expense of the employees. I strongly urge that the suggestions and recommendations which I have made above be adopted in any legislation passed to reform the Railroad Retirement System.

Thank you.

Chairman Pickle. Now, Mr. A. T. Otto, representative of the Yardmasters.

STATEMENT OF A. T. OTTO, JR., PRESIDENT, RAILROAD YARDMASTERS OF AMERICA

Mr. Otto. Mr. Chairman, I submitted a paper which I think is self-explanatory concerning my views on the legislation. I would just like to take 1 minute to read from an excerpt of "Railroad Retirement Temporary Benefit Increase," dated May 11, 1973.

The closing paragraph of the minority report in there said:

> Again Congress is being asked to provide another temporary extension. There is no permanent financing. The deficit must consider the present railroad employees who may have no pension reserved when they reach age 65. Let's think of the public which will feel the pressure of the higher freight costs. Let's recommit this bill and demand a permanent solution.

That was signed by Mr. Samuel Divine, Mr. James Collins, and Mr. Barry M. Goldwater, Sr. I think they have expressed my opinions much better than I can.

[The prepared statement follows:]

STATEMENT OF A. T. OTTO, JR., PRESIDENT, RAILROAD YARDMASTERS OF AMERICA

My name is A. T. Otto, Jr. I am President of the Railroad Yardmasters and a member of the Railroad Retirement Committee of the Railway Labor Executives' Association or R.L.E.A. I wish to present my views as a minority member of this Committee.

I share the concern of the majority relative to the financial crisis in the Railroad Retirement Account; however, I disagree with the majority pertaining to the cause and the cure.

The problems prior to the Railroad Retirement Act of 1974 are history and I see no reason to repeat previous testimony concerning them. The problems that have developed since that time are the subject of the proposed legislation (H.R. 1646) and I think we should benefit from experience and not repeat the past mistakes.

The financial problems are not caused by the benefits paid to the long-term railroad employees. The financial problems are stark examples of the fallacies of underfunding and interfund borrowing.

_If_ the Railroad Retirement Fund had not been used to make up shortages paid out as "windfall benefits" and _if_ the Railroad Retirement Fund had not been used to make up shortages in the Railroad Unemployment account, we would not need to be meeting here today. It is my opinion, that these funding deficiencies cannot and must not be given a unrealistic short term solution consisting of more benefit cuts and more borrowing.

In 1974 when Congress removed the provisions for dual benefits (windfall benefits) it phased them out but preserved them for those who were equitably vested. Congress also authorized appropriations from general revenues to pay for the phase out of these benefits on a level basis. History now proves that neither the Congress, the Labor Management Committee, nor the Retirement Board made accurate projections relative to the costs of the phase out. The result was that the Retirement Fund was used to pay the difference between the amount appropriated for the dual benefits and the actual costs of these benefits. Thus, $1.8 billion of the Railroad Retirement Fund was used to pay benefits which were clearly not connected with railroad service. It simply is wrong to cut benefits of lifetime railroad employees because huge unreimbursed withdrawals were made from his/her retirement fund.

Between 1981 and 1983 employment within the railroad industry suffered a twenty-five (25) percent reduction. This resulted in a tremendous increase in the number of people receiving benefits from an underfunded Railroad Unemployment account. As a result, the Railroad Retirement Account was also used to pay these benefits on a loan basis. The result was a 650 million drain on the Retirement Fund. That 650 million increases each day. Once again, it is wrong to cut retirement benefits because of an underfunded unemployment account.

Life long railroad employees should not be penalized because of interfund borrowing. Employees nearing retirement age and vested in a system have every right to expect to receive their accrued benefits under the system. Employees on the rolls of the system have every right to expect to continue to receive the amounts that the system promised them upon retirement.

If indeed this is to be accomplished, then the solution must provide the following:

(1) Railroads must repay the loans made to the R.U.I.A. account from the Railroad Retirement Account.

(2) Repayment of the dual benefit shortages by the federal sector.

(3) An increase in current taxes paid by both the railroads and the railroad employees.

(4) The elimination of any provision which allows retirement funds to be used for anything other than retirement benefits.

The legislation before you also contains provisions for benefit reductions which could not be made by any retirement plan in the private sector. For Congress to force such benefit reductions upon railroad retirees is unthinkable. Using Social Security increases to offset Tier II benefits, is simply a benefit reduction. This could not be made in the private sector because of the E.R.I.S.A. protection. They should not be forced upon railroad retirees under the guise of a "labor-management agreement."

In past negotiations the parties agreed to reduce the Supplemental Annuity due long time railroad employees from $64.00

per month to $43.00 per month. By so doing, the parties shifted $21.00 per month to the regular retirement account from the Supplemental Annuity account. The Supplemental Annuity Account is financed solely by the railroads and the transfer resulted in a tremendous savings to this railroad financed fund. There was nothing wrong with this concept at that time. There is nothing wrong with that concept at this time, except the legislation before you now attempts to tax the entire Tier II Pension amount and then return the money to the Railroad Retirement Fund. The result is a further reduction in retiree benefits and a further increase in employee costs at no expense to the railroads. This could not be accomplished in the private sector. Congress should not impose it by Law upon a railroad retiree.

In 1974 Mr. Dempsey testified that the future costs of the retirement system, with the single exception of the costs of phasing out dual benefits, would be born by the industry. (See Attachment "A").

In 1983 the General Accounting office reveals that poor statistical methods used at the Railroad Retirement Board has resulted in the Retirement Board receiving 40 million a year in over-payments through the financial interchange. If true, then another deficit will surface in the near future. (See Attachment "B").

It is time for all concerned to exercise some sound financial judgment. There are alternatives and there simply must be a compromise solution.

Mr. Stockman's previous testimony provides the basis for a compromise without the drastic reduction in benefits due vested employees, and without the bending of present law relative to using Social Security increases to reduce the benefits of present retirees. As a minority member of the Labor Committee, I urge you to consider the following:

FOR RAILROAD EMPLOYERS:

(1) Confirm the wage base to Social Security on July 1, 1983.

(2) Increase employer tax by 1% effective January 1, 1984.

(3) Reimburse the Retirement Fund the money loaned to the R.U.I.A. Fund.

FOR RAILROAD EMPLOYEES:

(1) Confirm wage base to Social Security on July 1, 1983.

(2) Increase employees Tier II tax by 1% on July 1, 1983.

FOR RAILROAD RETIREES:

(1) Confirm all C.O.L.A. adjustments to those adopted by the Social Security legislation and then further eliminate all Tier II increases due in the year 1983.

FOR THE GOVERNMENT SECTOR:

(1) Rectify the deficit in the dual benefit appropriations.

(2) Transfer the borrowing authority of the Railroad

Unemployment Insurance Account to the General Treasury or at least eliminate the right to borrow from the Retirement Account.

(3) Have the President appoint a Special Bipartisan Commission to study all aspects of the problems and make recommendations prior to January 1, 1984 concerning the long range problems.

This may well be the last time that any of us will be afforded the opportunity to correct these problems. I ask your support for a compromise solution.

Thank you.

"A"

Calendar No. 636

93d Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 93-1345

RAILROAD RETIREMENT ACT RESTRUCTURING

REPORT

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

TO ACCOMPANY

H.R. 15301

TOGETHER WITH

MINORITY VIEWS

August 29, 1974.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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FUTURE COSTS

The Committee has reported a bill to the House which places the Railroad Retirement System on a sound financial basis. Current actuarial estimates are that the bill will lead to an actuarial deficit of less than one-half of 1 percent of taxable payroll. This is considered by the Committee to be well within the limits of actuarial tolerance.

During the hearings, Mr. William H. Dempsey, Chief Negotiator for the railroads, made a commitment to the effect that all future benefit liberalizations in the Railroad Retirement Act, other than those occurring as a result of amendments to the Social Security Act, will be financed 100 percent by the railroad industry. During the hearings Mr. Dempsey said:

> Mr. Dempsey. The railroad industry is perfectly prepared to fund the Railroad Retirement System in every respect in which it bears a reasonable resemblance to any other private industry pension plan, and what that means is that if somehow these figures go askew and we run into difficulty in the future because we have not put enough money in with relation to the benefits that are being provided, we will fund that, we will take care of it, that is our responsibility.
>
> The single exception is this 3.64 percent cost of phasing out dual benefits because in our view dual benefits are an anomaly, and in the view of the Commission on Railroad Retirement, they are a quirk in the law. They don't exist in any other industry. They never would have been the product of collective bargaining. In those circumstances we urge that this discrete element, this single feature of the Railroad Retirement System, is properly a Federal responsibility, but it is only in that respect that we seek Federal funding of this whole program.

THE EFFECT OF H.R. 15301 UPON THE FINANCIAL STATUS OF THE RAILROAD RETIREMENT SYSTEM

	Percent of level taxable payroll of $5,840,000,000	Amount (millions)
Current deficit	9.06	$529
Benefit improvements:		
(a) Early supplemental annuities	.19	11
(b) Early spouse benefits	.79	46
(c) Increased survivor benefits	2.12	124
(d) Total	3.10	181
Deficit to be overcome	12.15	710
Savings:		
(a) Restriction on dual benefits	4.08	238
(b) Benefit formula and associated elements	3.43	201
(c) Supplemental account balance	.04	2
(d) Transfer of dual benefit phaseout cost	3.64	213
(e) Increased investment income	.50	29
(f) Total	11.68	683
Remaining deficit	.46	27

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Vol. 6 No. 8 April 19, 1983 Page 57

"B"

- OMB Rules That Agencies Must Submit Paperwork Requirements for Approval .... Page 58
- Appeals Court Orders ICC To Make Conrail Lower Rates on Recyclables .... Page 58
- Appeals Court Overturns ICC Ruling on Conrail Joint Rate Cancellations .... Page 59
- House Interior Easily Approves Coal Slurry Legislation; Support Seen Growing .... Page 59
- Boxcar Drawbar Caused Puncture of Tank Car, Spilling Nitric Acid in Denver .... Page 61

SLANTS & TRENDS

POOR STATISTICAL METHODS AT THE RAILROAD RETIREMENT BOARD have brought an extra $40 million a year in overpayments to the retirement fund from the Social Security Administration, according to a recent study by the General Accounting Office. The GAO reviewed the 1979 financial data, the latest available when the study started, for the financial interchange between the two. The interchange is designed to equalize retirement benefits for rail and non-rail employees.

CONSISTENT ERRORS SHOWED UP IN TWO OF THE THREE major aspects of the interchange -- namely, in calculations of benefits and administrative costs. The third, calculations of taxes, was free from errors, GAO reported. Almost 25% of the 197 cases the GAO reviewed were in error, many for more than a decade, the report said.

THE SOCIAL SECURITY ADMINISTRATION CHECKED ACCURACY ONLY ONCE in the 30-year history of financial interchange. Audits have never been required and the amounts transferred have never been audited, GAO said.

* * *

Chairman **Pickle**. Before we go to the next witness, let me ask you with respect to the statement you gave to the committee, you suggested that the railroad wage base be changed to conform to the social security wage base with respect to annualization.

Would you apply that to both tier I and tier II?

Mr. **Otto**. Yes, sir.

Chairman **Pickle**. You were the employee representative a minute ago.

Mr. **Otto**. Only tier I. I did not hear you.

The social security wage base should be conformed to social security?

Chairman **Pickle**. I am asking you, if we tried to make it conform to the same wage base that social security follows and if you are in general support of that, as I assume from your testimony, my question was, would you let that apply for both tier I and tier II or only for the wage base for tier I and not tier II? Is it for both or do you have a position?

Mr. **Otto**. It is for both.

Chairman **Pickle**. All right. Your representative earlier testified that he did not have a position on it at this point.

Chairman **Pickle**. Now, Mr. Ripp, I presume that we should have you now for your statement.

STATEMENT OF ANDREW M. RIPP, INTERNATIONAL VICE PRESIDENT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Mr. **Ripp**. I also have a statement which I wish to be received as read into the record.

Chairman **Pickle**. It will be.

Mr. **Ripp**. I will dispense with reading my written document here.

I am also a member of the RLEA, Railroad Retirement Commitee. However, I was not party to the agreement between the parties. It is our position that the tax structures of the proposed legislation is weighted heavily against the employees and the retirees.

Second, it removes benefits that the employees have already paid for.

And third, it does nothing to secure the financial security of the plan into the foreseeable future.

As Mr. Jacobson explained, up until 1974 we matched taxes with the carriers. In 1974, when they restructured the bill in an exchange of a 4-percent wage increase with a promise that the plan would be the tier II portion of railroad retirement, would be financed into perpetuity by the industry, we made these concessions.

I can tell you that the employees under no circumstances would have considered the 4-percent wage increase if it was not for the 60/30.

So what we have here now is an agreement between the parties, according to the Congressional Office of Budget Statistics, would yield about $5 billion over a 5-year period. The carriers portion of this $5 billion is approximately $1 billion; the portion of the employers and retirees is approximately $4 billion without any security.

Now, it is our position that the benefits already paid for under the plan such as early retirement—and I know you explained that this committee has no jurisdiction over that particular item so I will not go into that. But it is our position that the plan should be so fashioned as to secure the plan into the foreseeable future.

And under the testimony of the parties, they estimate that the employment level would have to remain about 350,000 employees.

So we suggest that this would be the plateau, a minimum tax to secure the plan into the foreseeable future and not have the employees continuously pay over and over again for the same benefits.

As we know, if this was a private pension plan, the law would prohibit promising of benefits and not providing the fund for such benefits.

The railroad employee has paid heavily for its plan and the layman does not understand how Congress, in their own opnion, misappropriates their funds. It is their understanding in reading the history of the tax structure of the plan that at the outset of the railroad retirement system the funds were used by the Government and did not receive the going rate of interest. Their explanation is that it is a subsidy of the Government.

Now, the question was raised here that you have to be careful when labor and management sit down because it costs the Government money in the railroad retirement plan. Well, that is far from the truth.

The real problem started in 1954 when, over the strong objection of labor and management, Congress put in the dual benefits and from 1954 to 1974, that cost $4 billion. Our people feel they subsidized again. They used the career pension plan's money to pay dual benefits.

Congress elected to take their money and use it. They feel that it is a subsidy also. In 1974 Congress, in their wisdom, tried to correct the inequity and they said that the Government would pick up that dual benefit, but right away it was reneged upon. Here we are in 1983 and it is a $2 billion subsidy again out of the career railroadman's pension fund, and that is exactly how the man feels back on the job.

He does not understand how he is borrowing money from the social security interchange when the money is theirs. He does not understand how you borrow money that is his. If it is $100 million owed to him, he needs $50 million, he does not understand how he is borrowing his own money.

So I am trying to give you an idea of how the rank and file feel about it and how my organization feels about it.

I thank you, sir.

Chairman PICKLE. Well, thank you, Mr. Ripp.

[The prepared statement follows:]

STATEMENT OF ANDREW M. RIPP, INTERNATIONAL VICE PRESIDENT OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND MEMBER OF THE COMMITTEE ON RAILROAD RETIREMENT OF THE RLEA

THE RAILROAD RETIREMENT SYSTEM AND THE FINANCIAL HEALTH OF THIS SYSTEM IS OF VITAL IMPORTANCE TO 1,000,000 RETIRED RAILWORKERS, THEIR FAMILIES AND SURVIVORS, TO 100,000 RAIL UNEMPLOYMENT INSURANCE BENEFICIARIES AND THEIR FAMILIES, AND TO THE 388,000 ACTIVE RAIL EMPLOYEES.

FIRST, MY REMARKS ON THIS ISSUE ARE NOT INTENDED TO IMPUGN IN ANYWAY THE CREDIBILITY OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION OR THE CREDIBILITY OF ANY OF ITS INDIVIDUAL MEMBERS. THE PURPOSE OF MY REMARKS IS TO SET FORTH THE THOUGHTFUL AND CONCERNED POSITION OF MY BROTHERHOOD IN AN EFFORT TO STIMULATE DIALOGUE SO THAT THE SOLUTION TO THE PRESENT CRISIS IN THE RAILROAD RETIREMENT SYSTEM SHALL BE FAIR AND FINANCIALLY BALANCED WITH RESPECT TO ALL CONSTITUENTS INVOLVED. IT IS MY HOPE THAT THE NECESSARY GURANTEED PROTECTION BE PROVIDED TO THE PLAN SO THAT IT WILL BE FINANCIALLY FUNCTIONAL INTO THE FORESEEABLE FUTURE. IT IS MY INTIMATE CONCERN THAT THE REMEDIAL LEGISLATION NOT BE FINANCIALLY WEIGHTED AGAINST RAILWAY EMPLOYEES AND RETIREES WHOM IT IS MY DUTY TO FAIRLY REPRESENT.

THERE APPEARS TO BE A NUMBER OF MISCONCEPTIONS WITH RESPECT TO THE RAILROAD RETIREMENT (AND UNEMPLOYMENT INSURANCE) SYSTEM. THE FIRST SUCH MYTH IS THAT RAILROAD RETIREMENT SYSTEM IS SUBSIDIZED BY THE FEDERAL GOVERNMENT. THE FACT THAT THE RAILROAD PENSION SYSTEM IS EMBEDDED IN FEDERAL LAW AND ADMINISTERED BY A FEDERAL AGENCY CONNOTES THAT THIS PENSION

SYSTEM IS "SUBSIDIZED" BY THE FEDERAL GOVERNMENT. NOTHING COULD BE FURTHER FROM THE TRUTH. THE CONTRIBUTIONS OF RAILROAD EMPLOYEES AND EMPLOYERS HAVE MADE THE RAILROAD RETIREMENT SYSTEM FINANCIALLY SELF-SUFFICIENT SINCE ITS INCEPTION. THIS FINANCING INCLUDES THE ADMINISTRATIVE COSTS OF THE SYSTEM INCLUDING THE SALARIES OF THE RAILROAD RETIREMENT BOARD MEMBERS WHO ARE PRESIDENTIAL APPOINTEES.

ANOTHER MISCONCEPTION IS THAT THE BENEFITS FOR RAILWAY RETIREES ARE EXCESSIVELY GENEROUS. IT IS OUR POSITION THAT THIS COMMITTEE HAS HEARD EVIDENCE TO SUPPORT A CONTRARY VIEW. ADDITIONALLY, A REVIEW OF A CROSS SECTION OF THE BENEFICIARIES OF THE RAILROAD RETIREMENT SYSTEM WOULD DEMONSTRATE THAT SUPERIOR TO ALL OTHER GOVERNMENT RETIREMENT SYSTEMS MARRIED LOW INCOME RETIREES BENEFIT THE MOST UNDER THE RAILROAD RETIREMENT SYSTEM.

THE EXISTING RAILROAD RETIREMENT SYSTEM WITH SOME SIGNIFICANT EXCEPTIONS, IS ESSENTIALLY THE RESULT OF PREVIOUS LABOR-MANAGEMENT AGREEMENTS WHICH WERE ENACTED AS CONSENSUAL LEGISLATION.

HOWEVER, IN 1954 OVER THE OBJECTIONS OF RAILROAD LABOR AND MANAGEMENT, CONGRESS ENACTED ELIGIBILITY FOR DUAL WINDFALL BENEFITS UNDER BOTH THE SOCIAL SECURITY AND RAILROAD RETIREMENT SYSTEMS. CONTRARY TO CONGRESS' ANALOGOUS DECISION WITH RESPECT TO DUAL BENEFITS UNDER CIVIL SERVICE RETIREMENT SYSTEM AND SOCIAL SECURITY, CONGRESS DID NOT ASSUME THE BURDEN OF PAYING THESE DUAL BENEFITS AND THE BURDEN WAS THUS ASSUMED BY THE RAILROAD RETIREMENT SYSTEM. THE BURDEN OF COVERING THESE DUAL WINDFALL BENEFITS FROM 1954 UNTIL 1974 RESULTED IN A 4 BILLION DOLLAR PRICE TAG TO THE RAILROAD RETIREMENT SYSTEM.

FURTHER, WITH REFERENCE TO THE FINANCIAL INTERCHANGE, RAILROAD RETIREMENT RECEIVES FROM RAIL EMPLOYERS AND EMPLOYEES THE EQUIVALENT OF SOCIAL SECURITY PAYROLL TAXES, ESTIMATED TO TOTAL 1.5 BILLION IN FISCAL YEAR 1984. THESE RAIL "TIER I" PENSION CONTRIBUTIONS ARE VIRTUALLY IDENTICAL TO WHAT THE SOCIAL SECURITY TAXES WOULD HAVE BEEN. THE ONLY DIFFERENCE IS THAT SOCIAL SECURITY TAXES ARE COLLECTED ON AN ANNUAL WAGE BASE, BUT RAILROAD "TIER I" PENSION CONTRIBUTIONS ARE FIGURED ON A MONTHLY WAGE BASE EQUAL TO ONE-TWELFTH OF THE ANNUAL SOCIAL SECURITY WAGE BASE. THIS DISCREPANCY ROBS RAILROAD RETIREMENT OF ABOUT 50 MILLION EACH YEAR IN "TIER I" PENSION CONTRIBUTIONS.

IN 1974, RAILWAY EMPLOYEES AGREED TO A 4% WAGE CONCESSION IN EXCHANGE FOR THE INDUSTRIES COMMITMENT TO FINANCE THE SYSTEM INTO PERPETUITY. THE OVERRIDING PROVISION OF THE 1974 AMENDMENT THAT PROVIDED THE STIMULANT FOR THIS CONCESSION WAS THE 60-30 PROVISION. AS IS WELL KNOWN, RAILROAD WORKERS WORK IN ALL KINDS OF WEATHER AND ALL TYPES OF ADVERSE AND DANGEROUS CONDITIONS, AND AFTER 30 YEARS PLUS VERY MUCH LOOK FORWARD TO RETIREMENT. IT IS ESPECIALLY NOTEWORTHY THAT, ACCORDING TO WORK LIFE TABLES DEVELOPED BY THE ASSOCIATION OF AMERICAN RAILROADS, A RAILROAD WORKER'S WORK EXPECTANCY WITH 20 YEARS OF SERVICE IS ONLY UNTIL AGE 57 INDICATING THAT ACTUARIALLY THAT AVERAGE RAILROAD WORKER WOULD NEVER BECOME ELIGIBLE FOR RETIREMENT EVEN UNDER THE 60-30 PROVISION (AAR, ACTUARIAL TABLE).

IT IS INTERESTING TO NOTE THAT A VERY SIGNIFICANT NUMBER OF RAILROADERS WHO TAKE ADVANTAGE OF THE 60-30 RETIREMENT PROVISIONS HAVE WAY IN EXCESS OF THE REQUIRED THIRTY YEARS SERVICE AND IN MANY CASES UP TO 42 YEARS OF SERVICE AT AGE 60.

THE 4% WAGE CONNCESSION IN 1974 WAS EQUAL TO APPROXIMATELY 22¢ PER HOUR AND NOW HAS BEEN COMPOUNDED TO APPROXIMATELY 46¢ PER HOUR. THIS AMOUNT INCREASES WITH EACH NEGOTIATED SETTLEMENT. THUS, IT CAN BE UNDERSTOOD WHY THE RANK AND FILE OF THE WORKERS WOULD OPPOSE ANY CHANGES IN THE 60-30 PROVISION OF THIS ACT. AGAIN IT IS ESPECIALLY NOTEWORTHY TO VIEW THIS PARTICULAR ASPECT IN LIGHT OF THE LAW OF THE LAND WITH RESPECT TO PRIVATE PENSION SYSTEMS. CONGRESS IN ITS WISDOM PASSED THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 ESSENTIALLY INTENDING TO REQUIRE EMPLOYERS WHO MAKE PENSION PROMISES TO DELIVER THEM, AND TO PREVENT EMPLOYERS FROM PROMISING PENSION BENEFITS WHICH THEY CANNOT DELIVER. TO REQUIRE RAILROAD WORKERS TO COMPROMISE BENEFITS UNDER THHE 60-30 PROVISION OF THE 1974 AMENDMENTS WOULD BE ESSENTIALLY TO REQUIRE THEM TO RENEGOTIATE AN ISSUE WHICH THEY HAD PREVIOUSLY MADE CONSESSIONS TO OBTAIN. THIS WOULD BE CONTRARY TO LAW, IF IT INVOLVED A PRIVATE PENSION SYSTEM.

THE RAILROAD INDUSTRY GAINED TWO-FOLD WHEN THEY NEGOTIATED THE 60-30 PROVISION. THE INDUSTRY ENJOYED A FINANCIAL BONANZA BY BUYING OUT JOB PROTECTION WHICH RESULTED FROM THE SHRINKING PHYSICAL STRUCTURE OF THE INDUSTRY ENCOURAGING THE EMPLOYEES TO TAKE AN EARLY RETIREMENT AND AT THE SAME TIME INTENTIONALLY ACTING SURPRISED AT THEIR EARLY RETIREMENT EXIT FROM THE INDUSTRY.

THE RAILROAD INDUSTRY FURTHER EXPLOITS THE RETIREMENT SYSTEM BY BEING PERMITTED TO SETUP SUBSIDIARY COMPANIES AND ENGAGE OUTSIDE CONTRACTORS TO PERFORM RAILROAD WORK INTENTIONALLY AVOIDING PAYMENT OF RAILROAD RETIREMENT TAXES.

IN 1974 AS A RESULT OF A PRESIDENTIAL COMMISSION ASKED TO STUDY TO THE RAILROAD RETIREMENT PLAN, CONGRESS IMMEDIATELY RECOGNIZED THEIR RESPONSIBILITY RELATIVE TO THE WINDFALL AND DUAL BENEFITS AND HAD THE LAWS AMENDED TO PROVIDE THAT THE PAYMENT FOR THE WINDFALL AND DUAL BENEFITS WOULD BE THE RESPONSIBILITY OF THE UNITED STATES GOVERNMENT GRANDFATHERING PRESENT DUAL AND WINDFALL BENEFITS. THIS 1974 AMENDMENT WAS VETOED BY PRESIDENT FORD, BUT ULTIMATELY THE WISDOM OF THE LEGISLATORS PREVAILED AND THEY OVERWHELMINGLY VOTED TO OVERRIDE THE PRESIDENT'S VETO. HOWEVER, IMMEDIATELY AFTERWARD, THE GOVERNMENT STARTED TO RENIG ON ITS COMMITMENT TO FULLY FUND THE WINDFALL AND DUAL BENEFITS. THUS, SHORTFALL FUNDING COMMENCED AND CONTINUED TO THE AMENDMENTS OF 1981. THE PRICE TAG FOR THIS SHORTFALL FUNDING IS 2 BILLION DOLLARS TO DATE.

IN 1981, THE AMENDMENTS TO THE RAILROAD RETIREMENT ACT WERE PASSED AUTHORIZING THE RAIL INDUSTRY PENSION FUND TO BORROW FROM THE GENERAL FUNDS IN THE TREASURY. THE AMOUNT OF BORROWING WAS LIMITED TO THE PROJECTED AMOUNT OF THAT YEARS FINANCIAL INTERCHANGE TRANSFER, SO AS TO ENSURE REPAYMENT WHICH THE 1981 AMENDMENTS MANDATED. AN ADDITIONAL PART OF THE MAJOR RESTRUCTURING OF RAILROAD RETIREMENT IN 1981, CONGRESS ADDED A NEW "BENEFIT" PRESERVATION PROVISION TO THE RAILROAD RETIREMENT

ACT. UNDER THIS SECTION 22, THE BOARD IS REQUIRED TO REPORT TO CONGRESS AND THE PRESIDENT BY APRIL 1, IF IT PROJECTS THAT THE RAIL INDUSTRY PENSION FUND, AFTER EXHAUSTING ITS BORROWING, WILL NOT BE ABLE TO FINANCE FULL BENEFITS IN THE UPCOMING FISCAL YEAR. SECTION 22 MANDATES THAT THE RAILROAD RETIREMENT BOARD PROMULGATE REGULATIONS IMPOSING A PRO RATA REDUCTION ON INDUSTRY PENSIONS SO THAT (1) FULL SOCIAL SECURITY EQUIVALENT BENEFITS BE PAID, AND (2) THE SAME LEVEL OF INDUSTRY PENSION BENEFITS BE PAID EACH MONTH. THE RAILROAD RETIREMENT BOARD REPORTED ON FEBRUARY 18, 1983 THAT IT WILL HAVE TO REDUCE THE "TIER II" PORTION OF THE MONTHLY RAIL INDUSTRY PENSIONS BY 40% STARTING ON OCTOBER 1, 1983.

1983 CRISIS

THE PRESENT FINANCIAL CRISIS OF THE RAILROAD RETIREMENT SYSTEM RESULTS FROM A NUMBER OF FACTORS. THE FIRST FACTOR AND THE FACTOR MOST OFTEN CITED IS THE EXTRAORDINARY IMBALANCE BETWEEN CONTRIBUTORS AND BENEFICIARIES. THE SECOND CAUSE FOR THIS CRISIS RESULTS FROM THE STEEP DECLINE IN RAILROAD EMPLOYMENT. HOWEVER, THESE ARE BUT TWO OF THE MANY IMPORTANT CAUSES FOR THE PRESENT CRISIS. ALSO RESPONSIBLE IN PART FOR THE PRESENT CRISIS IS THE FAILURE OF CONGRESS TO ASSUME THE BURDEN FOR WINDFALL AND DUAL BENEFITS FROM 1954 UNTIL 1974 RESULTING IN A 4 BILLION DOLLAR BURDEN ON THE RAILROAD RETIREMENT PENSION

FUND. ALSO A SIGNIFICANT CONTRIBUTING FACTOR TO THE PRESENT CRISIS IS THE SHORTFALL FUNDING OF THESE WINDFALL AND DUAL BENEFITS FROM 1974 UNTIL 1981 TO THE TUNE OF A 2 BILLION DOLLAR BURDEN. FURTHER, THE CURRENT PROLONGED RECESSION HAS REDUCED EMPLOYMENT FROM SOME 515,000 EMPLOYEES IN AUGUST 1981 TO 388,000 IN JANUARY OF 1983. CORRELATIVELY, BENEFITS UNDER THE UNEMPLOYMENT INSURANCE SYSTEM EXPONENTIALLY RISED CUTTING DEEPLY INTO THE PENSION FUND.

RESPONSE TO THIS CRISIS

PURSUANT TO SECTION 22, THE RAILROAD RETIREMENT BOARD ANNOUNCED THAT IF NO ACTION IS TAKEN, UNDER CURRENT LAW IT WOULD BE REQUIRED TO ISSUE REGULATIONS THAT WOULD CUT TIER II BENEFITS OF PRESENT RETIREES, 40% EFFECTIVE OCTOBER 1, 1983 RISING TO 80% ON OCTOBER 1, 1984. DURING THE FEBRUARY MEETING OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION IT BECAME APPARENT THAT IT WOULD BE IMPOSSIBLE TO REACH AN UNANIMOUS AGREEMENT WITH RESPECT TO H.R. 1646 AMONG THE REPRESENTATIVES OF LABOR.

DUE TO THE URGENCY OF THE SITUATION INVOLVING THE IMPENDING CUTS IN BENEFITS OF THE RETIREES, COUPLED WITH THE ADAMANT POSITION TAKEN BY THE CARRIERS IN DEMANDING GIVE BACKS SUCH AS THE 60-30 REVISIONS AND THE ADDITIONAL FINANCIAL TAX BURDEN PLACED ON THE EMPLOYEES AND RETIREES, WE BELIEVE THAT IT WAS IMPOSSIBLE TO NEGOTIATE A COMPREHENSIVE AGREEMENT FOR MEANINGFUL LEGISLATION IN THIS CLIMATE. NOTWITHSTANDING OUR POSITION, THE PARTIES REACHED THEIR SO CALLED AGREEMENT WHICH GAVE RISE TO THE PROPOSED LEGISLATION IDENTIFIED AS H.R. 1646.

THIS JOINT AGREEMENT IMPACTS ON THE FOUR DISTINCT CONSTITUENCIES INVOLVED IN THE RAILROAD RETIREMENT SYSTEM AS FOLLOWS:

1. RAILROAD EMPLOYER PARTICIPATION. THIS REVISION WOULD INVOLVE ADDITIONAL TAX INCREASES ON RAILROAD EMPLOYERS INVOLVING INCREASED RAIL TAXES OF 1% ON JULY 1, 1984, AN ADDITIONAL 1% IN JULY 1, 1985 AND A FURTHER 1.5% IN JULY 1, 1986 IF NECESSRAY. IF ALL THE POTENTIAL TAX INCREASES WITH RESPECT TO THIS REVISION GO INTO EFFECT, THE TOTAL INCREASE FOR RAILROAD EMPLOYERS WILL BE 3.5%.

2. RAILROAD EMPLOYEE PARTICIPATION. ACTIVE EMPLOYEES WOULD BE ASKED PURSUANT TO THIS REVISION TO CONTINUE AND INCREASE THEIR CONTRIBUTIONS. THE SO CALLED AGREEMENT REPRESENTING THE MAJORITY VIEW OF LABOR WOULD INCREASE TAXES ON EMPLOYEES BY .75% ON JULY 1, 1984, AN ADDITIONAL .75% ON JULY 1, 1985 AND A FURTHER INCREASE OF .75% ON JULY 1, 1986 IF NECESSARY. ADDITIONALLY, THE ACTIVE EMPLOYEES ARE REQUIRED TO SACRIFICE THE CURRENT 60-30 PROVISION FOR A NEW FORMULA THAT WILL REDUCE THEIR SUPPOSEDLY GUARANTEED RIGHTS AND BENEFITS WHICH WILL AMOUNT TO AN ADDITIONAL .8% CONTRIBUTION TO THE PLAN PLUS THE CONTRIBUTIONS THE PLAN REALIZES FROM THE INCREASED WAITING PERIOD FOR DISABILITY ANNUITIES APPROXIMATES A FULL 1% WHICH TOTALS OUT TO AN EMPLOYEE CONTRIBUTION OF 3.25%.

3. BENEFICIARIES. WHILE THE JOINT RAIL LABOR MANAGEMENT PROGRAM WILL NOT REQUIRE ANY CUT IN BENEFITS TO EXISTING BENEFICIARIES, CURRENT ANNUITANTS AS WELL AS THOSE RETIRING IN THE FUTURE WILL MAKE SIGNIFICANT CONTRIBUTIONS. FOR EXAMPLE THERE WILL BE A 6 MONTH POSTPONEMENT IN JULY 1983 COLA TO JANUARY 1984 AND SUBSEQUENT COLA'S WOULD BE IN JANUARY OF EACH YEAR. THE TAX ON THE SOCIAL SECURITY EQUIVALENT PIECE OF THE RAILROAD RETIREMENT BENEFITS SIMILAR TO WHAT THE SOCIAL SECURITY COMMISSION HAS RECOMMENDED WOULD ALSO BE PLACED IN EFFECT, AS WELL AS THE TAX ON THE SO CALLED TIER II PIECE. REVENUES GENERATED BY THIS TAX WOULD BE RETURNED TO THE RAILROAD RETIREMENT ACCOUNT. THESE TAXES ARE SIMILAR TO WHAT IS ALREADY BEING CONTEMPLATED BY THE HOUSE WAYS AND MEANS COMMITTEE. FUTURE TIER I COLA ADJUSTMENT TO THE EXTENT THAT THEY EQUAL 5% WILL BE USED TO OFFSET TIER II BENEFITS. THE COLA POSTPONEMENT AND THE NEW TAXES ON BENEFITS EQUATE TO AN APPROXIMATE 2% CONTRIBUTION BY THE BENEFICIARIES OF THE SYSTEM. THIS AMOUNT ALSO MUST BE CONSIDERED AN ADDITIONAL CONTRIBUTION BY THE CURRENT EMPLOYEE FOR IT WILL SURELY BE MADE BY HIM WHEN HE BECOMES A BENEFICIARY.

4. THE GOVERNMENT SECTOR. THE GOVERNMENT PARTICIPATION IN THE JOINT RAIL MANAGEMENT PROGRAM IS LIMITED TO (1) CORRECTING INEQUITIES THAT HAVE ARISEN AND IMPACTED THE RAIL RETIREMENT

ACCOUNT NEGATIVELY AND (2) PATTERNING THE RAILROAD UNEMPLOYMENT SYSTEM MORE CLOSELY TO THE EXISTING FEDERAL AND STATE UNEMPLOYMENT ARRANGEMENT. THE GOVERNMENT OBLIGATIONS CAN BE BEST DESCRIBED AS THREE FOLD; (i) RAILROAD RETIREMENT ACCOUNT WOULD BE PAID THE MONIES OWED IT BY SOCIAL SECURITY ON A FULLY CURRENT BASIS; (ii) THE DEFICIT IN DUAL BENEFIT APPROPRIATIONS WOULD BE RECTIFIED. THE JOINT AGREEMENT WOULD CORRECT THIS REMAINING INEQUITY BY ALLOWING THE ACCOUNT TO RECOVER THE EQUIVALENT OF THE AMOUNT BY WHICH THESE PAYMENTS EXCEEDED THE APPROPRIATIONS FROM 1974 TO 1981. THIS WOULD BE PHASED IN ON A THREE YEAR BASIS, 1984 TO 1986 COINCIDENT WITH THE EMPLOYER AND EMPLOYEE TAX INCREASES. THE THIRD AND LAST PORTION WOULD BE AVAILABLE ONLY IF NECESSARY, SIMILAR TO THE CONDITIONS ATTACHING TO THE 1986 TAX INCREASES; (iii) THE BORROWING AUTHORITY OF THE RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT WOULD BE TRANSFERRED FROM THE RAILROAD RETIREMENT ACCOUNT TO THE GENERAL TREASURY. THIS PIECE OF THE JOINT AGREEMENT WOULD PROVIDE BORROWING AUTHORITY FOR THE RAILROAD UNEMPLOYMENT SYSTEM SIMILAR TO THAT WHICH HAS LONG BEEN AVAILABLE TO THE STATES UNDER THE GENERAL FEDERAL STATE SYSTEM.

LABOR VIEWS NOT REFLECTED IN THE JOINT RAIL LABOR MANAGEMENT AGREEMENT

1. ANY ALTERATION OF THE BENEFITS UNDER THE 60-30 PROVISION WHICH WAS NEGOTIATED IN RETURN FOR A 4% WAGE CONCESSION IN 1974 IS VEHEMENTLY OPPOSED. WE CONTEND THAT THE 60-30 PROVISION WAS A QUID PRO QUO FOR LABORS' 4% WAGE CONCESSION, AND THUS LABOR SHOULD NOT BE FORCED TO RENEGOTIATE AN ISSUE WHICH IT HAS AND HAS

CONTINUED TO MAKE CONCESSION IN RETURN FOR. IT MUST BE NOTED THAT IN THE PRIVATE PENSION SECTOR ERISA WOULD PROHIBIT THE RISK OF THE FINANCIAL INSOLVENCY OF PENSION FUND FROM FORCING EMPLOYEES TO RENEGOTIATE BENEFITS WHICH HAD PREVIOUSLY BEEN SECURED. RAILWAY LABOR SHOULD NOT BE TREATED ANY DIFFERENTLY. IT CANNOT BE FORGOTTEN THAT THE RAILROAD RETIREMENT PLAN HAS NOT EVER BEEN SUBSIDIZED BY THE GOVERNMENT. IN FACT, A REVIEW OF THE HISTORY OF THE RAILROAD RETIREMENT SYSTEM WOULD SUPPORT JUST THE OPPOSITE. THE RAILROAD RETIREMENT ACT CAME ABOUT BY THE URGING OF THE FEDERAL GOVERNMENT AND THE STATES WHO WERE OBLIGATED TO CARE FOR THE SENIOR CITIZENS AND THE POOR IN THE EARLY THIRTIES. PRESIDENT ROOSEVELT DIRECTED THE PARTIES TO ESTABLISH A SOCIAL PLAN IN ORDER TO TAKE THE BURDEN AWAY FROM THE FEDERAL GOVERNMENT. THUS RAILWAY LABOR DID NOT REQUEST GOVERNMENT INVOLVEMENT; THE GOVERNMENT URGED THE INDUSTRY TO DEVELOP A SOCIAL PLAN. THUS, THERE IS NO REASON WHY RAILWAY LABOR SHOULD BE FORCED TO MAKE CONCESSIONS WITH RESPECT TO BENEFITS PREVIOUSLY SECURED WHEN LABOR IN PRIVATE INDUSTRY COULD NOT BE SO COMPELLED.

2. LIKEWISE, WE CONTEND THAT THE ACTIVE EMPLOYEE, SHOULD NOT BEAR THE FULL BURDEN OF THE EMPLOYEE TAX INCREASE AND BENEFIT DECREASE AGREED TO BY THE PARTIES; SINCE SAID EMPLOYEES HAVE ALREADY PAID FOR AND WILL CONTINUE TO PAY FOR VIA THE 4% SALARY CONCESSION IN 1974.

3. EVEN THOUGH THE DISCUSSION DOCUMENT PROVIDED BY HOUSE AND SENATE STAFF TO THE RAIL LABOR AND MANAGEMENT REPRESENTATIVES WHO REACHED THE JOINT LABOR MANAGEMENT AGREEMENT DESCRIBED ABOVE, INCLUDED A PROVISION TO CONSIDER A REVENUE STABILIZATION DEVICE, NO SUCH REVENUE STABILIZATION DEVICE EITHER AN EMPLOYER DUTY TO PAY A MINIMUM TAX ON A FROZEN EMPLOYMENT COMPLIMENT FIGURE OR A PROVISION PROPORTIONATE TO A PRODUCTIVITY FACTOR IS INCLUDED IN THE JOINT LABOR MANAGEMENT AGREEMENT. WE CONTEND THAT A SIGNIFICANT DROP IN THE NUMBER OF RAILROAD EMPLOYEES A DROP WELL BELOW THE PROJECTIONS OFFERRED BY RAILWAY MANAGEMENT AT THE TIME OF NEGOTIATIONS WITH RESPECT TO THE 60-30 ISSUE. WE WOULD FURTHER CONTEND THAT THE RAPID DROP IN EMPLOYMENT NUMBERS RESULTED NOT ONLY FROM THE RECESSION BUT RESULTED IN SIGNIFICANT DEGREE FROM THE INDUSTRIES CONCERTED EFFORT TO BUY OUT JOB PROTECTION AND ENCOURAGE EARLY RETIREMENT.

THE CARRIERS HAVE ALREADY RECEIVED THEIR "DUAL WINDFALL" BENEFIT FROM THE ADOPTION OF THE 60-30 PROVISION IN THE 1974 AMENDMENTS. THEY HAVE ENJOYED THE FINANCIAL BONANZA OF BUYING OUT JOB PROTECTION, ENCOURAGING THE EMPLOYEE TO TAKE EARLY RETIREMENT AND AT THE SAME TIME THEY REAPED THE DUAL BENEFIT OF THE 4% WAGE CONCESSION THEY EXTRACTED FROM THE EMPLOYEES WHICH THEY WILL CONTINUE TO ENJOY INTO THE FUTURE AND WHICH WILL BE COMPOUNDED WITH EACH SUBSEQUENT NEGOTIATION. ISN'T IT IRONIC THAT THE EMPLOYEES ARE NOW PAYING AND WILL BE REQUIRED TO PAY ADDITIONAL TAXES FOR THEIR TIER II BENEFITS WHEN THE CARRIERS IN 1974 ASSURED THAT THEY WOULD FUND THESE BENEFITS INTO PERPETUITY, IN THE TESTIMONY INVOLVING THE 1974 AMENDMENTS.

WE FURTHER CONTEND THAT A REVENUE STABILIZATION DEVICE SUCH AS A REQUIREMENT THAT INDUSTRY PAY A MINIMUM TAX EQUAL TO AN EMPLOYMENT COMPLIMENT OF SAY 350,000 EMPLOYEES WOULD BE CONSISTENT WITH THE ACTUARIAL ANALYSIS, SOLIDIFY THE FUTURE OF THE RAILROAD RETIREMENT SYSTEM. IT WOULD SEEM THAT SUCH A PROVISION WOULD NOT BE UNREASONABLE TO THE RAILROAD INDUSTRY SINCE PRESENTLY EMPLOYMENT LEVELS ARE ABOVE THAT FIGURE AND THE INDUSTRIES POSITION IS THAT EMPLOYMENT WILL STABILIZE AT 350,000 EMPLOYEES.

SUCH A PROVISION WILL GIVE RECOGNITION OF THE EMPLOYEES CONTRIBUTIONS TO THE PRODUCTIVITY OF THE RAILROAD SYSTEMS IN THE PAST AND GIVE FURTHER RECOGNITION OF THEIR CONTRIBUTIONS IN THE FUTURE. THE CONTRIBUTIONS CURRENTLY RESULTING FROM THE ADVANCEMENT OF MERGERS, CONSOLIDATIONS, AND OTHER BENEFITS THE RAILROADS ARE ENJOYING AND WILL CONTINUE TO ENJOY UNDER THE DEREGULATION OF THE INDUSTRY.

IT IS INTERESTING TO NOTE THAT RAILROAD EMPLOYEE PRODUCTIVITY HAS SUBSTANTIALLY INCREASED IN THE PERIOD BETWEEN 1970 AND 1981.

IN 1970 THE GROSS TON MILES WERE 765 BILLION AND IN 1981 THEY WERE 912 BILLION WHILE THE EMPLOYMENT IN THIS PERIOD OF TIME DECREASED FROM 643,000 IN 1970 TO 515,000 IN 1981. PRESENTLY WE HAVE 388,000 EMPLOYEES AND THE GROSS TON MILES ARE THE SAME OR IMPROVED OVER THE 1981 FIGURES.

4. THE INDUSTRY HAS FURTHER EXASPERATED THE REVENUE BASE OF THE RAILROAD RETIREMENT SYSTEM BY BEING PERMITTED TO SET UP SUBSIDIARY COMPANIES AND ENGAGE OUTSIDE CONTRACTORS TO PERFORM RAILROAD WORK INTENTIONALLY VOIDING PAYMENT OF RAILROAD RETIREMENT TAXES. THIS PRACTICE SHOULD BE PROHIBITED BY LAW BY AMENDING H.R. 1646 TO PROVIDE THAT ALL RAILROAD WORK REGARDLESS OF WHERE PERFORMED BE SUBJECT TO RAILROAD RETIREMENT TAXES. THIS PROVISION WOULD FURTHER PREVENT AN EROSION OF THE CONTRIBUTION BASE.

CONCLUSION

THE PROVISION OF THE JOINT LABOR MANAGEMENT AGREEMENT WHICH PERMITS RAILROAD RETIREMENT TO BORROW MONEY OWED TO IT BY SOCIAL SECURITY ON A FULLY CURRENT BASIS HAS UNANIMOUS LABOR SUPPORT. THE PROVISION CALLING FOR THE CORRECTION OF THE SHORTFALL FUNDING OF DUAL AND WINDFALL BENEFITS ALLOWING THE RAILROAD RETIREMENT ACCOUNT TO RECOVER THE EQUIVALENT OF THE AMOUNT BY WHICH DUAL AND WINDFALL PAYMENTS EXCEEDED APPROPRIATIONS FROM 1974 TO 1981 ALSO HAS UNANIMOUS LABOR SUPPORT. FURTHER, LABOR UNANIMOUSLY SUPPORTS THE PROVISION IN THE LABOR MANAGEMENT AGREEMENT WHICH CALLS FOR THE BORROWING AUTHORITY OF THE RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT TO BE TRANSFERRED FROM THE RAILROAD RETIREMENT ACCOUNT TO THE GENERAL TREASURY AND PROVIDING FOR BORROWING AUTHORITY FOR THE RAILROAD UNEMPLOYMENT SYSTEM SIMILAR TO THAT WHICH HAS LONG BEEN AVAILABLE TO THE STATES UNDER THE GENERAL FEDERAL-STATE SYSTEM.

MY ORGANIZATION AS WELL AS OTHER AFFILIATES OF THE R.L.E.A. ARE TOTALLY CONVINCED THAT THERE ARE 3 VIEWS STRONGLY HELD BY RAILROAD EMPLOYEES WHICH ARE NOT REFLECTED IN THE SO CALLED JOINT LABOR MANAGEMENT AGREEMENT TO REVISE THE RAILROAD RETIREMENT SYSTEM.

FIRST IS TOTAL OBJECTION TO ANY REDUCTION IN THE BENEFITS WHICH RESULT FROM THE 60-30 PROVISION AS CONTAINED IN THE CURRENT LAW. THIS OBJECTION IS BASED ON THE WORKERS KNOWLEDGE THAT THE 4% WAGE CONCESSION THEY MADE IN 1974 SECURED THESE BENEFITS AND THEY SHOULD NOT HAVE THESE BENEFITS REDUCED OR IMPAIRED IN ANY WAY. IT IS OUR POSITION THAT REVISION LEGISLATION WHICH CONGRESS ENACTS SHOULD REQUIRE THE CARRIERS TO ASSUME THE ADDITIONAL TAX NECESSARY TO FULFILL THEIR COMMITMENT TO FUND INTO PERPETUITY THE COST OF TIER II BENEFITS.

SECOND, WE FIRMLY BELIEVE THAT A REVENUE STABILIZATION DEVICE SHOULD BE INCLUDED IN THE REVISION LEGISLATION. WE BELIEVE THAT A MINIMUM TAX BASE SHOULD BE IMPOSED ON THE INDUSTRY EQUAL TO AN INDUSTRY COMPLIMENT OF 350,000 EMPLOYEES. SUCH A MINIMUM TAX BASE WOULD INSURE THE FUTURE FISCAL SOLVENCY OF THE RAILROAD RETIREMENT SYSTEM AND WOULD NOT PLACE ANY UNDUE BURDEN ON THE INDUSTRY WHO WOULD ONLY GO BELOW THE 350,000 EMPLOYEE FIGURE AS A RESULT OF CONTINUED INCREASED PRODUCTIVITY OF ITS EMPLOYEES.

THIRD, WE BELIEVE THAT CONGRESS SHOULD GIVE THE MOST SERIOUS CONSIDERATION TO EXTENDING RAILROAD RETIREMENT COVERAGE TO THE ENTIRE INDUSTRY WHICH WOULD INCLUDE THOSE SUBSIDIARY COMPANIES AND CONTRACTORS TOGETHER WITH THEIR EMPLOYEES WHO PERFORM RAILROAD WORK ON A CONTINUING BASIS AND DO NOT CURRENTLY CONTRIBUTE A RED CENT TO THE RAILROAD RETIREMENT SYSTEMS. THEY DO HOWEVER CONTRIBUTE TO THE SHORTFALL IN THE SYSTEM BY NOT PAYING THEIR FAIR SHARE OF TAX TO A SYSTEM AND INDUSTRY FROM WHICH THEY DERIVE THEIR PROFITS AND LIVELIHOODS.

WE APPEAL TO YOU AND YOUR COMMITTEE TO GIVE THE MOST SERIOUS CONSIDERATION TO THESE LABOR VIEWS NOT REFLECTED IN THE SO CALLED JOINT LABOR MANAGEMENT AGREEMENT AND THE PROPOSED LEGISLATION BEFORE CONGRESS IN HOUSE BILL H.R. 1646. IT IS OUR HOPE THAT YOUR COMMITTEE WILL AMEND THE PROPOSED LEGISLATION TO PROVIDE THESE ADDITIONAL PROVISIONS WHICH ARE INTENDED TO SECURE THE SYSTEM INTO THE FORSEEABLE FUTURE AND WHICH DOES NOT REQUIRE THE EMPLOYEES AND RETIREES TO AGAIN PAY FOR BENEFITS PREVIOUSLY PAID FOR.

CHARLES H. PILLARD, *International President*

RALPH A. LEIGON, *International Secretary*

International Brotherhood of Electrical Workers

ANDREW M. RIPP, *International Vice President*
Tenth District

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Representative James J. Florio
House of Representatives
1740 Longworth House Office Building
Washington, D. C. 20515

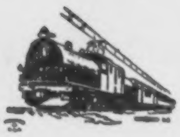
Dear Congressman Florio:

This will confirm conversations had with Mr. Rich Huberman immediately upon adjournment of the subcommittee hearing on Bill HR 1646 amendment to the Railroad Retirement Act March 1, 1983 and telephone conversation March 2 relative to same subject matter.

I advised Mr. Huberman that I would appreciate an appointment with you to discuss the fact that there was no RLEA agreement on the railroad issue. My Organization is an affiliate of the RLEA and I am a member of the Railroad Retirement Committee and have first hand knowledge of other affiliates of the RLEA and members of the same Committee who are of the same position (Brotherhood of Railway Carmen of the United States and Canada and Railroad Yardmasters of America). It is my position that the agreement reached by several railroad unions and the Carriers is unfair and financially weighted against the employees and the retirees. The bottom line does not provide the necessary guaranteed protection that the plan will be financially functional into the forseeable future.

The employees and retirees have made substantial financial contributions and are entitled to what they have paid for.

In 1974 the employees agreed to a 4% wage concession in exchange for the industry's committment to finance the system into perpetuity and, this fact is part of the Congressional record. The over-riding provision of the '74 amendment that provided the stimulant for this concession was the 60-30 provision. As you know railroad workers work in all kinds of weather and all types of adverse conditions and after 30 years plus are looking forward to retirement.



The 4% wage concession in 1974 was equal to approximately 22¢ per hour and now has been compounded to approximately 46¢ per hour. This amount increases with each negotiated settlement. Therefore they are ultimately opposed to any changes in the 60-30 provision of this Act.

The railroad industry gained two fold when they negotiated the 60-30 provision. The industry enjoyed a financial bonanza by buying out job protection which resulted from the shrinking physical structure of the industry encouraging the employees to take an early retirement and at the same time intentionally acting surprised at their early retirement exit from the industry.

The industry further exploits the system by being permitted to set up subsidiary companies and engage outside contractors to perform railroad work intentionally avoiding payment of railroad retirement taxes. This subterfuge should be prohibited by law by amending Bill HR 1646 to provide that all railroad work regardless of where performed be subject to railroad retirement taxes.

Further, the railroad industry is fully aware of its continuing efforts to merge and consolidate the physical system and the immediate future projects a transcontinental system which will further erode the overall employment posture of the industry. As related to the above in 1974 the industry committed itself to finance the system into perpetuity. Therefore, the Act should provide a provision that requires the industry to pay a minimum tax equal to an employment compliment of 350,000 employees thus solidifying the future of the railroad retirement system.

We have been experiencing the Administration's and legislators attempt to destroy the very principles that built this great nation. We have always been concerned with all the citizens and not just one segment of our society. The Administration's first attack was against the poor and the uneducated who could not fight back and the social programs supported by the majority of the people were cut back unrealisticly at the expense of unnecessary human suffering and mental anguish. Now that they have succeeded in abandoning the uneducated and poor they are attacking the heart of our social programs that being all federal legislative pension programs such as social security, railroad retirement, and government civil service plans. We all stand behind the principle that everyone is entitled to what they pay for.

The pension plans were financed by the labor forces and the industry's of this country. Those who have contributed to these plans financially and through their labors for many, many years are not to be deprived of the benefits they have been promised. The railroad workers are sick and tired of hearing those legislators that are either naive, or are deliberately misinterpreting the facts, repeatedly say that the federal government and the tax payers are not going to continue to subsidize the railroad retirement plan. The railroad retirement plan is not and has not been subsidized by the government, in fact, a review of its history will support just the opposite. The railroad retirement act came about by the urging of the federal government and the states who were obligated to care for the senior citizens and poor. President Roosevelt directed the parties to establish a social plan in order to take the burden away from the federal government. The first railroad retirement legislation was declared unconstitutional. However, by the insistance of President Roosevelt a commission was established. Labor and management reached an accommodation and the Act was conceived.

At its very outset and for numerous years thereafter the employees and the industry's contributions paid benefits to thousands who never contributed anything to the plan. The railroad retirement system plan cannot be compared to any private pension plan. It is a social program which covers spouses, widows, disabled, dependent children and has even assisted in the education of the under privileged. Further for many, many years the government used the railroad retirement funds at unreasonable interest rates to the advantage of the federal government. The plan started to experience its most serious financial problems after the Congress in the 1950's elected to pass legislation that would provide for dual benefits without providing the necessary funding for such benefits. This action by the Congress was over the objection of rail labor and rail management and is the sole responsibility of the government. The Congressional action cost the plan four billion dollars between 1951 and 1974 at which time the Act was again amended.

In 1974 a Commission was appointed, by the President of the United States, to again study the plan. As a result of this Commission's report the 1974 amendment was enacted. The Congress immediately recognized their responsibility relative to the windfall and dual benefits and the law was amended to provide that the payment for the windfall and dual benefits are the responsibility of the United States government grandfathering any dual or windfall benefits. This 1974 amendment was veto'd by President Ford. The wisdom of the legislators prevailed and they overwhelmingly voted to override the President's veto. However, immediately afterward, the government started to renege on its committment to fully fund the windfall and dual benefits. Thus shortfall funding commenced and continued until the amendments of 1981. This shortfall funding deprived the plan of 1.8 billion dollars to date.

In our opinion, any private fiduciary who would allow the contributions of employees to their pension fund to be used to pay benefits to participants of another fund, such action would be considered fraud. However, this is actually what took place when railroad retirement funds were used to pay dual and windfall benefits.

The employees and retirees have no control over such mismanagement and should not be made responsible for Congress attempting to reduce their benefits in return for capital gain by the government.

The Act should provide that when the retirement funds are experiencing difficulties the RUIA borrowing power be discontinued and the outstanding debt be repaid and during the emergency the borrowing authority be transferred to the general fund as in the case of unemployment compensation financed by the states.

Further we support the provision contained in the Bill relating to the borrowing power of financial interchange. This is a realistic approach and should be enacted.

We also support the provisions in HR 1646 having to do with RUIA borrowing authority.

In conclusion I appeal to you and the Congress to give serious consideration to the suggested changes referred to which should once and for all dismiss the omen that the railroad retirement plan is subsidized by the United States government when just the opposite is the case.

I look forward to having the opportunity to visit with you and discuss this matter.

Very truly yours,

O.W. Jacobson

O. W. Jacbbson
General Rresident
B.R.C.U.S.&C.

Andrew M. Ripp
International Vice President

AMR/g

Chairman **Pickle**. I am going to read your testimony because I know you feel very strongly about your position that the Congress has borrowed your money against your own funds.

I want to try to understand how you arrived at the fact that we owe you $4 billion. You allege that you have taken from your own fund that you have contributed?

Mr. **Ripp**. I would like to explain that. In 1954, Congress, over the objection of management and labor, put in the dual benefits and that was not the responsibility of the railroad employees to pay dual benefits. It was either the responsibility of the social security or the Federal Government.

Chairman **Pickle**. Well, do you take the position that we should not have had the dual benefits? Are you against the dual-benefit program now?

Mr. **Ripp**. I am not against the dual benefits but I am surely against someone other than those receiving those benefits paying for it.

Chairman **Pickle**. Well, we are both going back from 1975 when that was started.

The fact of the matter is, the Congress did that and I assume it was with the approval of management and labor. You said it was not?

Mr. **Ripp**. We opposed the dual benefits in 1954. Management and labor opposed it.

Chairman **Pickle**. Did you oppose it in 1974?

Mr. **Ripp**. In 1974, we were in favor of the Government taking back the responsibility of paying the dual benefits and grandfathering it.

In 1974, they amended the law that the payment of the dual benefits would be grandfathered and those payments would come out of the general fund, no longer out of the retirement account. However, they did not meet the full payment and used another approximately $2 billion of the railroad retirement money.

Chairman **Pickle**. Well, Doctor, I want to understand it better because it is obvious you feel very sincerely that we have used your money or that we have not paid it back, and I want to try to get a better picture of that.

Mr. Anthony? Mr. Thomas?

Mr. **Thomas**. Very briefly, I would like each of you, Mr. Jacobson, to respond as to whether or not you would support the idea that especially on tier I benefits, that the wage base ought to be annualized to conform to the treatment of the social security benefits and the wage base ought to conform to the social security wage base?

Mr. **Jacobson**. I will say this in regard to that. The letters that I am getting from my membership says to retain what we have got, even if it is going to cost them additional tax.

Now, I would like to look at the situation, what the situation would be if you went to, what you are saying to the annual wage in comparison to, say, 1 cent or 2 cents per our tax. See what the difference would be.

Mr. **Thomas**. But basically what you just said was, to retain the benefits you would have, they would be willing to pay the taxes?

Mr. JACOBSON. That is the information I am getting from my membership.

Mr. THOMAS. Can anyone else respond to that, please?

Mr. RIPP. I believe that if I was to put that to my railroad rank and file, that they would be in favor of it.

Mr. THOMAS. Of annualizing?

Mr. RIPP. Yes, sir. They know their benefits would increase and they would be in favor of it.

Mr. OTTO. It is in my paper.

Mr. THOMAS. I know it is. And what does your paper say?

Mr. OTTO. I do favor it.

Mr. THOMAS. That you agree that the annualized wage base ought to be something that is in the bill?

Mr. OTTO. Yes, sir.

Mr. THOMAS. Thank you.

Chairman PICKLE. Any other questions by the committee?

Before you part again, I am intrigued with the fact that you say that both management and labor were against the dual system back in 1954, and in 1974, when you continued it because it was already going in. I am surprised that Congress would pass a law to grant you benefits if both management and labor was against it.

Mr. RIPP. It is part of the historical record.

Chairman PICKLE. That is interesting.

Well, I see Mr. Hopkins is still out in the audience.

Mr. Hopkins, were you all against that in 1954 or were you around then?

Mr. HOPKINS. I was not around then, but the history is clear and management has consistently opposed the dual benefit and opposed lifting restrictions that would have reduced or eliminated it.

Chairman PICKLE. The employee, Mr. Berge, was your organization against the dual benefits back in 1954 and 1974?

Mr. BERGE. I was not on the scene at that time, but in reading the history of the railroad retirement system, the unions that belonged to the railroad executive association opposed that.

It is my understanding that one union did testify in behalf of dual benefits.

Chairman PICKLE. Well, we are talking about something that is history, but it does intrigue this Member. We will look into it. I don't know what you can say about it except that it is a matter of history.

Mr. Hopkins.

Mr. HOPKINS. Mr. Pickle, we would be happy to provide you a paper that documents the history of the dual benefit, how it came into being, what changes have occurred and how they occurred, and who took what position with respect to it.

Chairman PICKLE. Well, I would be glad to have your statement then.

Thank you, gentlemen, very much for your testimony.

Mr. JACOBSON. Thank you very much, sir.

Mr. RIPP. Thank you, sir.

Chairman PICKLE. Now we will ask Mr. Lloyd Duxbury, president of the Railroad Retirement Association.

Mr. Duxbury, if you will take your position at the witness table, we will be pleased to receive your testimony.

STATEMENT OF LLOYD L. DUXBURY, PRESIDENT, RAILROAD RETIREMENT ASSOCIATION

Mr. DUXBURY. Mr. Chairman, it is a privilege and honor for me to be here as president of the Railroad Retirement Association, and I appreciate the opportunity.

That association is a new association started last year designed to represent railroad retirees. We got off the ground in the fall.

We have now something over 9,000 members. Within the last seven days, 501 new members joined the association.

It is an understatement to say that retirees are in a state of panic today over the threat of a 40-percent cut in tier II. All they have heard is if something is not done, their tier II pension will be cut by 40 percent in October.

They are at a loss to understand why this is true because, historically, going back to 1973, 1974, restructuring of railroad retirement, it was under the tier II, was a private company pension plan to be financed entirely by the railroad industry. Members in the retirement community cannot understand why at this point they are threatened with a cut in a pension plan, which is designed to be a private company pension plan and to be financed entirely by the industry.

Of course, the threat of a cut of 40 percent in tier II means a lot to a retiree who is in the practice of income and retirement income to which I refer on page 2 of my statement.

In the statistics taken from the publications of the Railroad Retirement Board back on December 31, 1979, average monthly annuity for pensioners was $446 when we required age 65 or older. For 58 percent of that group, the monthly pension ranged from less than $100 to $500. Fifty-five percent of all retired employee pensioners had monthly pensions ranging from less than $100 to $500.

I have put these figures and charts in my statement because there has been a lot of misconception about the amount of railroad retirement pension. Some people have indicated that they are enormous in amount when compared with other pensions. The facts prove that that is not true, and people who are in these ranges of monthly pensions are alarmed at the thought of a 40-percent cut.

If you take a look at why we are here today dealing with a proposed 40-percent cut based upon section 22 put into the law in 1981—and we will deal with the reasons for the fund suffering what is called a cash flow problem—certainly, the figures prove, I think that one of the major causes of the cash flow problem of the fund today is the cost of the 60/30, early retirement provision put in to the law in the 1973-74 restructuring.

Back in May 26, 1981, Mr. Hopkins in a report to the Congress said, "The rate of early retirement and the cost of that provision to the railroad retirement account has been far greater than was estimated when the 1974 Act was under consideration." And this ever-increasing cost has been a primary factor in undermining the long-term financial soundness of the railroad retirement system.

Based upon these facts, there can be no denying that the 1974 restructuring plan did not provide adequate funding for that early retirement provision and the tax agreed to be paid by the industry at that time supposedly to finance tier II in its entirety was not adequate and was much too low. It did not cover the cost of this plan.

That drain has been going on for 8 years that that fund has been drained, because there was not adequate funding in it to pay the cost of the early retirement. It is interesting to look at a recent publication of the Railroad Retirement Board, the title of which is "Informational Conference Handbook," 1982. I would call your attention specifically to a table on page I-14. It gives the numbers and average amount of monthly benefits under the Railroad Retirement Act in current payment status on September 30, 1981.

According to these statistics, on that date there were pensioners aged 65 or over who were getting the 65 or over benefit. The total of that number was 181,900 retirees. Their average monthly amount of pension was $500.

On the same date, in the unreduced age 60 to 64 group, and those are the people who took the early retirement under the early retirement provision, there are 105,300. Their average monthly benefit was $877, or $377 more than those who retired at age 65 or over.

In the reduced benefit group, age 60 to 64, those are the people who retired while 60 to 64 and did not have 30 years of service, there are 67,400 of them. Their average monthly pension was $329.

Now, if you compute the difference in cost between the regular retirement and the special benefits available under the 60/30, early retirement rule, based upon this table, the additional cost per year is somewhere between $450 million and $660 million for the 105,000 who took early retirement.

It is obvious that this early retirement provision was never properly funded. And now, because of this, in large part because of these current retirees, and after all, the majority, 30 percent are under the early retirement rule, the other 70 percent are taking regular retirement, reduced or what, they are being asked to take a cut because this provision was not properly funded.

Now, I am not being critical of labor, management for this because they are human and they admit that they made a mistake. But can we allow pensioners who are in the $100 to $500 a month range to suffer because somebody else made a mistake?

So what do they propose to do here? They propose to put together a package which is called a funding package under section 22. Now, I suppose I could argue about the word funding because in my understanding of the word funding, it does not mean taking away from somebody something that they have. Funding means bringing additional funds into the pot.

So I suppose there could be some objection to this funding package insofar as it does not comply with section 22. It is not limited to funding because what it purports to do is to take away from present retirees portions of their benefits and leave them in the fund in order to finance the fund for the future.

Now, if you are talking about taking $880 million away from current retirees over a 5-year period from 1983 to 1988 by means of the offset of the tier I COLA against the tier II, now if that is part of the package, which it obviously is, it seems to me that that is as much tax as is the tax on the employees or the tax on the company.

But if for some technical or legalistic reason, the provisions have a labor management funding agreement which would reduce the benefits to present retirees cannot be called "taxes"—and I have taxes in quotes—at least it must be admitted that they are monetary extractions and they are extractions from the pockets of retirees.

In my humble opinion, this difference is a distinction without a difference. They have the same effect on the retiree because they take the money out of his pocket.

One of the big questions here about this package which was a question back in 1974, in 1974 the then OMB said this labor-management package is not financially sound. It won't work. It won't produce an actuarily sound fund.

One of the issues with this package is, is it, in fact, actuarily sound? According to the OMB figures, the modification of a 60/30, early retirement rule provided for in this package would prodcue savings or reductions in benefits totaling $350 million over the 1983 to 1988 period. Now, that is only $70 million per year.

If you take a look at the $880 million they want to take away from current retirees over the same period of time, that amounts to $190 million a year.

Let's take a look at what $70 million reduction per year would do under the 60/30 rule based upon the figures in table 3 of the Railroad Retirement Board publication. If I compute it right, it would amount to a reduction of about $55 per month. And when figures here show the early retirement at $877 per month on the average, as compared with ordinary retirement of age 65 or over at $500, $55 does not mean much.

It is quite obvious that this package is designed to continue to encourage early retirement. There is no question about it.

You, Mr. Chairman, have been involved in recent months in taking the troublesome steps of eventually raising the retirement age under social security. We have no objection as retirees to encourage an early retirement, provided those who want it pay the bill and provided retirees don't have to give up part of their benefits to finance the sweetened benefits to encourage people to take early retirements. It just is not fair in the circumstances.

Even today when we talk about high unemployment in the railroad industry, and we all admit it is high, yet some of the major railroads in this country are still encouraging early retirement to get rid of employees. Some of the major railroads have what they call early retirement incentive separation pay plans and they start as early as 55. And what they do is they give an employee a monthly payment, perhaps over a 5-year period so that he will be encouraged to take early retirement and leave, and then when he becomes 65 or 62, as the case may be, he will get his pension.

But if we are going to encourage early retirement in the railroad retirement system, then it has got to be funded by those who benefit from it. And that must be the carriers. They are the ones who want to reduce their employment. They are the ones who want to encourage people to retire. Fine, but let them pay the bill. Don't take it out of the pockets of current retirees.

The offset of the tier I COLA is an alarming first step in the eventual elimination of tier II. Because if you talk about a 5 percent of tier I and then you take a dollar-for-dollar offset against the tier II for that COLA increase in tier I, maybe the 5 percent does not sound like too much but if you take the average component figures published by the Railroad Retirement Board, where the average compenent of $307 for tier I and the average component of tier II is $131, whole 5 percent of tier I amounts to 11½ percent of tier II.

There really must be the situations today where the amount of tier II and the amount of tier II are such that 5 percent of tier I in the reduction of tier II will eliminate tier II entirely, even at this beginning stage.

I would like to read to you the position of some of our members on the issue of income taxation of tier II. This comes from members who put it together in their own words. It is their idea and I should like to take just a few minutes to read it. It starts on page 9 of my statement.

Some members of the association have called to our attention the fact that the benefits under tier II were fixed at present levels in the legislative process as well as the labor-management negotiation process in the expectation of all concerned that those benefits would be free of income tax.

They point out that during the legislative process, railroad employers were able to use the non-tax ability as a lever to achieve substantial savings in the amount of their pension contributions relative to pension contributions for the rest of the private industry sector.

The railroad unions went along with this approach because they correctly perceived that with untaxed pensions, railroad retirees could maintain a standard of living comparable to that of their retiring counterparts in the other private industries.

Those complaining members refer to this proposal as a plan to shift a significant portion of the funding burden for the fund to the retirees and thereby lessen the burden for the employees all in face of the fact that tier II was supposed to be financed entirely by the employers.

They go on to suggest that any legislation subjecting tier II benefits to income tax should also include a provision making the necessary increase in the amounts of those benefits to offset the tax and also revisions increasing the tax on employers to whatever extent is necessary to fund the increase in benefits.

Those members contend that in this way the responsibility for the private pension plan portion of railroad retirement would remain with the employer and the retirees would be enabled to continue to rely on the previous commitments under this part of the system. And, of course, the Government would get additional revenue.

Management has agreed in the past, and I concur in it that because tier II is a Federal statute, the Congress has both the power and the ultimate responsibility to effectuate changes whether or not labor and management have reached agreement. Congress has the responsibility and the authority to analyze and test labor-management agreements to see whether they are sound, whether they are fair.

In this instance, as in all others affecting the system, the retirees are confident that the Congress sees the unfairness of their being subjected to a cut in benefits from a fund which the industry is supposed to finance. They are also confident that Congress sees the unfairness in reducing benefits of current retirees in order to provide a pot to provide sweeter benefits for future retirees.

It is not fair to reduce current benefits in order to provide a quid pro quo for higher contributions in the industry.

In this situation, retirees are in a tough situation and really a catch-22. If nothing happens, they get a 40-percent cut and I know that the great majority of the members of this association, if they were put right up against the tough choice and only had two choices, this proposal or a 40-percent cut, no other choices, they would say, "I'll go for the deal. I don't want a 40-percent cut."

But really, is it fair to put current retirees up against that kind of choice? I submit that it is not fair.

People who are living on fixed incomes, basically, and who have paid their taxes to the fund over the years, they pay taxes in excess of social security taxes all the time. I am confident as are they that the Congress will deal fairly with them.

Thank you, Mr. Chairman.

Chairman PICKLE. Thank you, Mr. Duxbury.

[The prepared statement and additional material follow:]

STATEMENT OF LLOYD DUXBURY, PRESIDENT, THE RAILROAD RETIREMENT ASSOCIATION

My name is Lloyd L. Duxbury. I am President of The Railroad Retirement Association. This Association was formed last Summer as a non-profit corporation under the Code of the District of Columbia. It is an individual membership association without any capital stock and with the members holding the voting power. The Association is not in any way affiliated with, nor does it represent, any element of organized rail labor nor any element of rail management. It is intentionally designed and structured to be governed by and for and to serve the interest of, only railroad retirees.

The first members joined in the middle of September 1982, a total of 200 that month. There are now over 9,000 members and there are new memberships coming in practically every day. Our present goal is 25,000 members by the end of this year, and we anticipate continued growth thereafter.

It has not been possible timewise to poll the membership on the issues and proposals under consideration, but I want to pass along to you the views and concerns expressed by the members.

CUT BACK IN TIER II BENEFITS IN OCTOBER 1983: The threat of a cut back in the Tier II benefit by as much as 40% in October of this year and 80% in 1984 has thrown the great majority of retirees into near panic and understandably so. According to the most recent statistics published by the Railroad Retirement Board on December 31, 1979; the average monthly annuity for the pensioners who retired at age 65 or older was $446.00. For 58% of that group the monthly pension ranged from less than $100.00 to $500.00. 55% of all retired employee pensioners had monthly pensions ranging from less than $100.00 to $500.00. The Tier II component for that whole group averaged $131.00 per month on December 31, 1979. For 57% of that group, the Tier II component ranged from less than $10.00 to $150.00 per month. The average monthly Social Security component for the whole group was $307.00. No wonder they are in panic at the thought of a reduction in Tier II by as much as 40%!

Attached are photo copies of Tables B-6 through B-10 on pages 24 thru 28 of the STATISTICAL SUPPLEMENT, 1980 ANNUAL REPORT, U.S. Railroad Retirement Board, containing the above statistics.

Not only are retirees in panic, they are bewildered because Tier II, the portion designated for the cut, came into the system as part of a complete restructuring of the whole system in 1973 and 1974, following recommendations of a Congressionally created Commission on Railroad Retirement (P.L. 91-377) and negotiated agreements between rail labor and rail management "for restructuring the Railroad Retirement System in a manner which will assure the long term actuarial soundness of such system." (P.L. 93-69, Section 107, July 10, 1973).

RAIL INDUSTRY COMMITMENT AND OBLIGATION TO FULLY FUND TIER II :

It was Public Law 93-69 which established the two tier type system. That law was described and characterized by the House Interstate and Foreign Commerce Committee in its Report No. 93-1345, page 16, as follows:

> "Last year, Public Law 93-69 was enacted, carrying out an agreement between management and labor reached through collective bargaining, *under which the railroads assumed the responsibility for hereafter paying all taxes required to support the Railroad Retirement system in excess of the Social Security tax rate, which would be paid by the employees.*
>
> The enactment of that Act significantly changed the character of the Railroad Retirement system. Whereas it formerly was a Federal retirement system, supported, as is Social Security and Civil Service Retirement by equal amounts paid by the employers and the employees, *the Railroad Retirement system is today, in essence, a company pension program administered, for historical reasons, by the Federal Government.*
>
> Tier I benefits hereafter paid to retirees, their dependents, and survivors will be a Social Security benefit, paid by the Social Security system through financial interchange; Tier II benefits will be based solely on railroad service, and will be paid for entirely by the railroads (except for the cost of phasing out dual benefits)." (Emphasis added).

The legislative history of the legislation is replete with statements that under the new structure, the industry would pay the full cost of Tier II and employees would no longer have to pay taxes toward. One rail labor official whose union was involved in the 1973 and 1974 negotiations asserts that in the 1974 negotiations, the rail unions yielded on a demand for a 4% hourly wage increase in return for rail management's commitment to pay the full cost of Tier II. Yet, that is the portion now threatened with a cut.

By the following language at page 14 in its 1974 Report No. 93-1193, the Senate Committee on Labor and Public Welfare made clear the essentiality of Public Law 93-445 as part of the package and commitments to ensure the financial soundness of the Railroad Retirement System:

> "The Committee has reported a bill which places the Railroad Retirement System on a sound financial basis. Current

actuarial estimates are that the bill will lead to an actuarial deficit of less than one-half of 1 percent of taxable payroll. This is considered by the Committee to be well within the limits of actuarial tolerance.

During the hearings, Mr. William H. Dempsey, Chief Negotiator for the railroads, made a commitment, as he had in testimony before the House Committee, to the effect that all future benefit liberalizations in the Railroad Retirement Act, other than those occurring as a result of amendments to the Social Security Act, will be financed 100 percent by the railroad industry. During the hearings Mr. Dempsey read into the record a portion of his statement to the House Committee as follows:

> MR. DEMPSEY. *The railroad industry is perfectly prepared to fund the Railroad Retirement System in every respect in which it bears a reasonable resemblance to any other private industry pension plan, and what that means is that if somehow these figures go askew and we run into difficulty in the future because we have not put enough money in with relation to the benefits that are being provided, we will fund that, we will take care of it, that is our responsibility*.
>
> The single exception is this 3.64 percent cost of phasing out dual benefits because in our view dual benefits are an anomaly, and in the view of the Commission on Railroad Retirement, they are a quirk in the law. They don't exist in any other industry. They never would have been the product of collective bargaining. In those circumstances we urge that this discrete element, this single feature of the Railroad Retirement System, is properly a Federal responsibility, but it is only in that respect that we seek Federal funding of this whole program." (Emphasis added).

On page 3 of his May 26, 1981 report to the Congress on the failure of negotiations between rail labor and rail management which had been directed by Public Law 96-582, enacted December 23, 1980, Mr. Charles L. Hopkins, Jr., Chairman of the National Railway Labor Conference, described the 1973-74 restructuring of the Railroad Retirement System in the following language:

"A fundamental aspect of the restructured railroad retirement system, which was agreed upon by the carriers and unions enacted by the Congress in the Railroad Retirement Act of 1974, is a "two-tier" system of taxes and benefits: one of which (Tier I) generally provides for taxes and benefits equivalent to those provided by the social security system (including the automatic application of legislative changes therein), and the second of which (Tier II) constitutes in essence a company pension plan for railroad employees, over and above the social-security level. As the congressional committees which recommended enactment of the 1974 Act recognized, Tier II thus constitutes "in essence, a company pension plan administered, for historical reasons, by the Federal Government," and those committtes accordingly contemplated that "(f)uture changes in Tier II benefits will arise out of collective bargaining between the railroads and the unions." H.Rept N.93-1345, age 16-17; S. Rept. No. 93-1163, at 16-17." (Emphasis added).

Attached hereto and marked "ATTACHMENT I" is a copy of the written report of the Joint Labor- Management Railroad Retirement Negotiating Committee, dated April 10, 1974 and addressed to the Chairman of the Senate Labor Committee and the Chairman of the House Interstate and Foreign Commerce Committee. The report listed a " BRIEF SUMMARY OF FUNDAMENTAL PRINCIPLES ", number 8 of which reads in part as follows: " Employees will not be required to make any contributions to the railroad retirement fund in excess of social security tax levels."

Under date of July 8,1981, the Office of Information and Public Affairs of the Association of American Railroads issued a publication entitled " THE RAILROAD RETIREMENT SYSTEM -- ITS STORY AND ITS PROBLEMS ", copy of which is attached hereto as "ATTACHMENT II". On page two thereof the 1974 restructuring of railroad retire- is described as follows:

> " In 1974, the structure of Railroad Retirement benefits was completely reorganized by Congress, with two ' tiers ' being established, more fully coordinating them with Social Security benefits. The first tier is based on combined Railroad Retirement and Social Security credits, using Social Security benefit formulas, while the second tier is based on railroad service only and is comparable in concept to the private pensions paid workers in other industries. The first tier is financed by a tax on both employees and employers , while the second tier is financed by taxes on the railroad only. " (Emphasis added)

The bewilderment of retirees is not lessened by the realization that the 40% cut is possible, "even though the system is financially sound on a long-term actuarial basis". JOINT STATEMENT OF WILLIAM H. DEMPSEY AND CHARLES I. HOPKINS, JR., before the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce, March 1, 1983, page 2. On that same page of that Joint Statement, Mr. Dempsey and Mr. Hopkins point out: "the possibility that such a cash-balance shortage would actually occur within the relatively near future first became critical in 1981". A fuller understanding of that statement can be obtained by reading in full the above mentioned statement of Mr. Hopkins, dated May 26, 1981, reporting to the Congress the inability of labor and management to carry out the directive of Congress by failing to reach agreement.

THE LABOR- MANAGEMENT "FUNDING" PACKAGE:

I. The 60-30 Early Retirement Provision; This provision is a "primary factor " in the cash flow problem which triggers the possibility of a 40 per cent cut in Tier II in October, 1983. In his above-mentioned May 26,1981 report Mr. Hopkins said: " the rate of early retirement and the cost of that provision to the railroad retirement account has been far greater than was estimated when the 1974 Act was under consideration, and this ever-increasing cost has been a primary factor in undermining the long-term financial soundness of the railroad retirement system." (Emphasis added)

Based upon the facts there can be no denial that the 1974 restructuring plan did not provide adequate funding for that early retirement provision and that the tax agreed to be paid by the rail industry to finance Tier II was too low and not adequate to cover the additional cost to the fund of implementing the 60-30 early retirement provision. What's more- that drain on the fund has been allowed to draw down the fund for over 8 continuous years.

Now, in large part because of this drain on the fund over the last 8 years or so retirees are confronted with a " funding " package which would extract from them over the 1983-88 five year period $1.45 Billion in benefits they would otherwise receive;and this total is exclusive of " savings" from the proposed modification of the 60-30 early retirement provision and also exclusive of the " savings " from the proposed waiting period for disability benefits.

The additional contribution to which rail management has agreed in this package would total only $1.17 Billion over the same five year period, and this for a fund which was to be financed in whole by the industry.

If, for technical or legalistic reasons, the provisions of the labor-management "funding " agreement which would reduce the benefits of present retirees can not be called "taxes ", at least it must be admitted that they are " monetary extractions " from the pockets of retirees- a distinction without a difference.They have the same effect on the pocket of the retiree as does the provision which would subject the Tier II benefit to the income tax- they extract money from the pocket of the retiree.

According to the figures of the Office of Management and Budget, the proposed modification of the 60-30 early retirement provision will produce " savings " of only $350 Million during the 1983-88 period. That's only $70 Million per year. Could that have been enough to make that provision a " primary factor" in the undermining of the financial soundness of the fund? Just for the delay of the July 1 COLA and the offset of the Tier I COLA against Tier II retirees are being asked to contribute $950 Million over the same five year period.That's $190 Million per year.

It seems obvious that the labor- management " funding " agreement is specifically designed to continue to encourage early retirement in the railroad industry. That's all right if the industry is willing to pay the additional cost, but it should not be done at the expense of the present retirees nor those who can not qualify for early retirement

In recent years and right up to this time some major railroad companies have encouraged early retirement, as early as 55 years of age. It is reported that the rail industry was the prime mover to get the provision included in the 1973-74 restructuring agreements and legislation. It shifted the additional cost to the fund. Now some major railroads have early retirement incentive separation pay plans to encourage early retirement and thereby reduce employment. A large number of employees have opted for these early retirement plans more or less voluntarily. Those with 30 years of service at the time of taking early retirement did so in reliance on receiving full benefits when reaching the age of 60 as the law now provides. If the law were to be changed now, they would not be able to undo what they did in reliance on the law as it was at the time and they would have little or no prospect of making up the difference.

II OFFSET OF TIER I COLA AGAINST TIER II BENEFIT: This would be a dollar-for-dollar reduction in the amount of the Tier II benefit for each dollar COLA increase in Tier I on a one time basis, but the Tier II reduction in that amount would be permanent.

At first blush this might be considered a small price to pay to ward off a 40% reduction in Tier II, but consider its applicability to the average amount of Tier I and Tier II shown on Table B-8 mentioned above and attached hereto. 5% of the average component of Tier I, $307.00, amounts to $15.35. Reducing the Tier II average component, $131.00, by $15.35 is a cut of over 11½%. Consider its effect where the Tier I component is $600.00 and Tier II $150.00. 5% of Tier I amounts to 20% of Tier II.

Furthermore, this proposal seems to do violence to the company private pension plan philosophy embraced in the 1973-73 restructuring. Also, it seems to be a possible first step in the eating up of Tier II by Tier I and the eventual elimination of Tier II. There must be actual situations now where the application of the formula would eliminate Tier II entirely. Retirees affected in that way to those extents would ask whether that is fair in the circumstances.

III INCOME TAXATION OF TIER II BENEFIT: Some members of the Association have called to our attention the fact that the benefits under Tier II were fixed at present levels in the legislative process as well as the labor-management negotiation process in the expectation of all concerned that those benefits would be free of income tax. They point out that during the legislative process, railroad employers were able to use the non-taxability as a lever to achieve substantial savings in the amount of their pension contributions relative to the pension contributions of the rest of the private industry sector. The rail unions went along with this approach because they correctly perceived that with untaxed pensions, railroad retirees could maintain a standard of living comparable to their retiree counterparts in other private industries.

Those complaining members refer to this proposal as a plan to shift a significant portion of the funding burden for the fund to the retirees and thereby, lessen the burden for the employers, all in face of the fact that Tier II should be financed entirely by the employers.

They go on to suggest that any legislation subjecting Tier II benefits to the income tax should also include a provision making the necessary increase in the amounts of those benefits to offset the tax and also, provisions increasing the tax on the employers to whatever extent is necessary to fund the increase in benefits. Those members contend that in this way, the responsibility for the private pension plan portion of Railroad Retirement would remain with the employers and the retirees would be enabled to continue to rely on previous commitments under that part of the pension plan portion. Of course, government revenues would thereby be increased.

CONCLUSION: Retirees must rely on Congress to test and and analyze each labor- management agreement which also affects current retirees to make certain that the provisions are fair to them. As stated by Mr. Hopkins on page 4 of his May 26,1981 report: " We recognize, however, that because Tier II is a Federal statute, the Congress has both the power and the ultimate responsibility to effectuate changes whether or not labor and management have reached agreement." Retirees are confident that the Congress sees the unfairness of their being subjected to a cut in their benefits from a fund which the industry is obligated to finance, especially in the face of the " primary factors " in the current cash flow problem of the Railroad Retirement Fund.They are confident Congress sees the the complete unfairness in making current retirees take a cut in benefits to help finance a sweeter retirement benefit for a future retiree or to provide a quid pro quo for an increase in the industry's tax contribution to the fund , which it is the industry's obligation to finance.

Retirees are in a Catch-22 situation, thanks to Section 22. Without having taken a poll of the members, I feel relatively sure that confronted with a choice limited to this agreement and the implementing legislation or a 40 per cent cut in Tier II in October, 1983 and an 80 per cent cut in 1984, a majority of the members of this Association would opt for the agreement and the legislation instead of the cuts , but is it fair to put them in this Catch-22 situation as Section 22 now does?

Table B-6.—Employee annuities in current-payment status on December 31, 1979, by type and by amount

Amount of annuity	Total		Age annuities						Disability annuities	
			Beginning at age 65 or older		Beginning before age 65					
					Full		Reduced			
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Average annuity	$478		$446		$749		$298		$431	
Less than $100.00	17,600	4	7,600	4	1/	1/	6,700	10	3,200	3
$100.00 to $149.99	24,000	5	10,000	5	1/	1/	9,800	15	4,300	4
$150.00 to $199.99	25,100	6	9,800	5	100	1/	9,400	14	5,700	6
$200.00 to $249.99	21,800	5	9,000	4	300	1/	6,500	10	6,000	6
$250.00 to $299.99	21,600	5	9,100	4	700	1	5,100	8	6,600	7
$300.00 to $349.99	27,200	6	13,100	6	800	1	4,900	7	8,500	9
$350.00 to $399.99	31,700	7	16,800	8	1,000	1	4,500	7	9,400	10
$400.00 to $449.99	35,700	8	21,400	10	1,000	1	4,600	7	8,700	9
$450.00 to $499.99	39,400	9	25,500	12	900	1	4,800	7	8,300	9
$500.00 to $549.99	33,200	7	19,600	10	1,000	1	4,700	7	7,900	8
$550.00 to $599.99	35,600	8	22,500	11	2,300	3	3,300	5	7,500	8
$600.00 to $649.99	30,600	7	17,100	8	5,000	6	1,700	2	6,900	7
$650.00 to $699.99	26,500	6	10,700	5	9,800	11	800	1	5,200	5
$700.00 to $749.99	24,200	5	5,100	2	14,900	17	300	1/	3,900	4
$750.00 to $799.99	21,800	5	2,500	1	16,400	19	100	1/	2,800	3
$800.00 to $849.99	17,000	4	2,200	1	13,200	15	1/	1/	1,500	2
$850.00 to $899.99	12,500	3	1,500	1	10,500	12	------	------	400	1/
$900.00 to $949.99	7,400	2	1,200	1	6,100	7	------	------	1/	1/
$950.00 and over	2,500	1	500	1/	2,000	2	------	------	1/	1/
Total	455,400	100	205,200	100	86,100	100	67,300	100	96,800	100

1/ Fewer than 50 or less than 0.5%.

Table B-7.—Employee annuities awarded in 1979, by type and by amount

Amount of annuity	Total		Age annuities						Disability annuities	
			Beginning at age 65 or older		Beginning before age 65					
					Full		Reduced			
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Average annuity	$678		$565		$877		$286		$572	
Less than $50.00	645	2	326	8	------	------	113	3	206	3
$ 50.00 to $ 99.99	909	4	275	7	------	------	472	14	162	3
$100.00 to $149.99	721	3	226	5	------	------	344	10	151	3
$150.00 to $199.99	921	4	259	6	------	------	493	14	169	3
$200.00 to $249.99	773	3	156	4	1	1/	419	12	197	3
$250.00 to $299.99	631	2	150	4	3	1/	311	9	167	3
$300.00 to $349.99	468	2	94	2	3	1/	224	7	147	2
$350.00 to $399.99	419	2	98	2	4	1/	170	5	147	2
$400.00 to $449.99	360	1	59	1	11	1/	145	4	145	2
$450.00 to $499.99	454	2	57	1	7	1/	153	4	237	4
$500.00 to $549.99	591	2	91	2	19	1/	176	5	305	5
$550.00 to $599.99	709	3	110	3	34	1/	140	4	425	7
$600.00 to $649.99	868	3	125	3	98	1	94	3	551	9
$650.00 to $699.99	1,156	4	147	3	202	2	66	2	741	12
$700.00 to $749.99	1,531	6	203	5	475	4	48	1	805	13
$750.00 to $799.99	1,928	7	240	6	946	8	31	1	711	12
$800.00 to $849.99	2,647	10	255	6	1,839	15	13	1/	490	8
$850.00 to $899.99	3,561	14	351	8	3,021	25	9	1/	180	3
$900.00 to $949.99	4,557	18	550	13	3,973	32	7	1/	27	1/
$950.00 to $999.99	1,474	6	322	8	1,141	9	------	------	11	1/
$1,000.00 and over	570	2	115	3	451	4	------	------	4	1/
Total	25,893	100	4,209	100	12,278	100	3,428	100	5,978	100

1/ Less than 0.5%.

Table B-8.—Components of employee annuities in current-payment status on December 31, 1979, by amount

Amount of component	Tier I: Social security component Number	Tier I: Social security component Percent	Dual RR-SS benefit windfall Number	Dual RR-SS benefit windfall Percent	Tier II: Regular railroad component Number	Tier II: Regular railroad component Percent	Supplemental employee annuity Number	Supplemental employee annuity Percent
Average, non-zero cases 1/---	$307		$110		$131		$54	
$ 0.01 to $ 9.99-----------	8,600	2	100	2/	10,800	3	700	2/
$ 10.00 to $ 19.99-----------	6,100	1	200	2/	22,700	5	800	2/
$ 20.00 to $ 29.99-----------	6,500	2	900	2/	23,600	6	4,500	2
$ 30.00 to $ 39.99-----------	5,100	1	1,400	1	15,600	4	6,500	4
$ 40.00 to $ 49.99-----------	5,300	1	2,600	1	16,100	4	86,100	47
$ 50.00 to $ 59.99-----------	4,800	1	3,900	2	17,100	4	7,100	4
$ 60.00 to $ 69.99-----------	4,300	1	6,400	3	17,900	4	7,000	4
$ 70.00 to $ 79.99-----------	4,400	1	11,700	6	19,400	5	71,700	39
$ 80.00 to $ 89.99-----------	4,800	1	16,200	9	20,500	5	------	-------
$ 90.00 to $ 99.99-----------	4,700	1	47,300	26	20,700	5	------	-------
$100.00 to $124.99-----------	10,000	2	45,700	25	50,000	12	------	-------
$125.00 to $149.99-----------	11,900	3	26,300	14	34,900	8	------	-------
$150.00 to $174.99-----------	12,700	3	11,700	6	26,300	6	------	-------
$175.00 to $199.99-----------	14,600	3	4,200	2	23,100	6	------	-------
$200.00 to $224.99-----------	19,500	5	2,700	1	22,100	5	------	-------
$225.00 to $249.99-----------	17,200	4	1,900	1	20,100	5	------	-------
$250.00 to $274.99-----------	15,400	4	600	2/	17,700	4	------	-------
$275.00 to $299.99-----------	14,500	3	200	2/	17,000	4	------	-------
$300.00 to $324.99-----------	20,500	5	100	2/	14,600	4	------	-------
$325.00 to $349.99-----------	35,200	8	100	2/	6,000	1	------	-------
$350.00 to $374.99-----------	47,100	11	2/	2/	1,400	2/	------	-------
$375.00 to $399.99-----------	35,300	8	-------	-------	100	2/	------	-------
$400.00 to $424.99-----------	31,500	7	-------	-------	------	-------	------	-------
$425.00 to $449.99-----------	30,100	7	-------	-------	------	-------	------	-------
$450.00 to $474.99-----------	18,000	4	-------	-------	------	-------	------	-------
$475.00 to $499.99-----------	13,700	3	-------	-------	------	-------	------	-------
$500.00 to $524.99-----------	10,800	2	-------	-------	------	-------	------	-------
$525.00 to $549.99-----------	15,500	4	-------	-------	------	-------	------	-------
$550.00 to $574.99-----------	3,500	1	-------	-------	------	-------	------	-------
$575.00 and over-------------	200	2/	-------	-------	------	-------	------	-------
Total, zero cases-------	20,700	-------	-------	-------	34,600	-------	25,700	-------
Total, non-zero cases---	431,600	100	184,200	100	417,800	100	3/184,400	100
Total------------------	452,300	-------	184,200	-------	452,400	-------	210,100	-------

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1/ Weighted sum of component averages will not produce average annuity amount as reductions for early retirement and other adjustments are not reflected.

2/ Fewer than 50 or less than 0.5%.

3/ Includes 93,700 averaging $66 awarded under 1937 Act provisions and 90,700 averaging $42 awarded under the 1974 Act.

NOTE.—Component data based on cases where record is available.

Table B-9.--Components of employee annuities awarded in 1979, by amount

Amount of component	Tier I: Social security component Number	Tier I: Social security component Percent	Dual RR-SS benefit windfall Number	Dual RR-SS benefit windfall Percent	Tier II: Regular railroad component Number	Tier II: Regular railroad component Percent	Supplemental employee annuity 1/ Number	Supplemental employee annuity 1/ Percent
Average, non-zero cases 2/---	$429		$141		$207		$42	
$ 0.01 to $ 9.99----------	372	1	------	------	9	3/	36	3/
$ 10.00 to $ 19.99----------	214	1	------	------	2,115	8	44	3/
$ 20.00 to $ 29.99----------	198	1	------	------	956	4	210	2
$ 30.00 to $ 39.99----------	226	1	------	------	548	2	348	3
$ 40.00 to $ 49.99----------	217	1	5	3/	457	2	11,174	95
$ 50.00 to $ 99.99----------	1,291	5	149	2	2,245	9	------	------
$100.00 to $149.99----------	858	3	4,953	71	1,754	7	------	------
$150.00 to $199.99----------	600	2	1,559	22	2,135	8	------	------
$200.00 to $249.99----------	565	2	169	2	3,512	14	------	------
$250.00 to $299.99----------	491	2	58	1	4,715	19	------	------
$300.00 to $349.99----------	583	2	35	1	5,743	23	------	------
$350.00 to $399.99----------	858	4	28	3/	1,148	5	------	------
$400.00 to $449.99----------	1,544	6	3	3/	------	------	------	------
$450.00 to $499.99----------	3,586	14	------	------	------	------	------	------
$500.00 to $549.99----------	9,006	36	------	------	------	------	------	------
$550.00 to $599.99----------	4,179	17	------	------	------	------	------	------
$600.00 and over------------	48	3/	------	------	------	------	------	------
Total, zero cases-------	471	------	------	------	------	------	1,682	------
Total, non-zero cases---	24,866	100	6,959	100	25,337	100	11,812	100
Total------------------	25,337	------	6,959	------	25,337	------	13,494	------

1/ Supplemental annuities awarded by the end of 1979 to employees awarded regular retirement annuities in 1979, including those not in tier format.

2/ Weighted sum of component averages will not produce average annuity amount as reductions for early retirement and other adjustments are not reflected.

3/ Less than 0.5%.

NOTE.— Component data based on cases where record is available.

Table B-10.—Number and average amount of employee annuities in current-payment status on December 31, 1979, by type and by component

Component	All annuities		Age annuities						Disability annuities	
			Beginning at age 65 or older		Beginning before age 65					
					Full rate		Reduced rate			
	Number	Average amount	Number	Average amount	Number	Average amount	Number	Average amount	Number	Average amount
Total, railroad	455,390	$478	205,246	$446	86,084	$749	67,270	$298	96,790	$431
Total, non-tiered cases	3,029	631	781	459	1,775	750	17	203	456	475
Tier I, net	431,629	307	190,577	290	83,954	638	66,132	196	92,966	302
Gross tier I	452,361	383	204,465	374	84,309	464	67,253	341	96,334	361
Offset for SS benefit	186,966	217	93,349	226	15,532	153	45,695	227	32,390	207
Tier II, total	417,796	131	188,363	108	84,285	248	59,341	79	85,807	102
Service and compensation before 1975	417,796	117	188,363	103	84,285	202	59,341	76	85,807	92
Additional for service before 1975	96,809	37	15,008	35	61,293	40	4,344	27	16,164	33
Service and compensation after 1974	96,809	23	15,008	23	61,293	24	4,344	22	16,164	20
Dual RR-SS windfall	184,176	110	89,545	114	21,648	119	41,149	103	31,834	101
Addition under social security minimum guaranty	4,806	165	621	92	42	88	195	100	3,948	181
Reduction for age	67,270	32	—	—	—	—	67,270	32	—	—
Supplemental annuity	184,417	54	85,058	63	68,485	43	13,564	56	17,310	48
Social security benefit	187,873	220	93,645	229	15,717	156	45,870	232	32,641	210

NOTE.—Component data based on cases where record is available.

Washington, D. C.

April 10, 1974

The Honorable Harrison A. Williams (chairman, Senate Labor Committee)
United States Senate (identical letter to Hon. Harley Staggers, chairman, House Interstate and Foreign Commerce Committee)
352 Old Senate Office Building
Washington, D. C.

Dear Senator Williams:

The Joint Labor-Management Railroad Retirement Negotiating Committee, established pursuant to Section 107 of Public Law 93-69, has now completed its consideration of the issues relating to the Railroad Retirement System that were the subject of the Report of the Commission on Railroad Retirement. As we advised you last week, we reached tentative agreement on April 1st. Approval by Union Presidents was obtained on April 10th.

We regret our inability to transmit at this time draft legislation reflecting our recommendations. The preparation of such a draft is underway. The complexity of the issues, however, prevented the parties from reaching accord, despite intensive efforts, sufficiently in advance of April 1st to permit a bill to be drafted by that date.

Accordingly, so that you may know promptly the character of the Negotiating Committee's principal recommendations we are attaching a three page "Brief Summary of Fundamental Principles" upon which the parties have agreed, and we will in this letter outline our major conclusions and indicate briefly the reasons underlying those conclusions.

In that connection, we wish to state at the outset that, as in any negotiation of this sort, concessions were made by each side in recognition of concessions made by the other side. The resulting group of recommendations, therefore, are interrelated in the sense that, taken together, they represent the parties' view of the most reasonable accommodation of all relevant interests. The parties strongly urge the enactment of these recommendations into law.

We now turn to discussion of the most significant of our recommendations. Our charge, as we understood it, was to formulate, through mutual agreement, a set of recommendations that would, first, place the Railroad Retirement fund on a sound financial basis, and, second, remedy existing inequities in the Railroad Retirement System -- the two general areas explored by the Commission on Railroad Retirement. Our approach to these problems is as follows:

1. Dual Benefits. Resolution of the so-called "dual benefit" problem is central both to insuring the fiscal soundness of the fund and to establishing equitable retirement benefits for all railroad employees. Alone among workers in the private sector of the American economy, railroad employees have been permitted by law to qualify for, in substance, two social security benefits -- one as a component of their railroad retirement benefit and another as a result of employment in another industry.

LLOYD DUXBURY STATEMENT
ATTACHMENT I

Moreover, as the Commission on Railroad Retirement pointed out, this results in a "windfall" to those workers who qualify under both systems. In the case of non-railroad employees, a single social security benefit is calculated on the basis of all service with all employers. In the case of a dual beneficiary, the total of his two social security benefits is larger than would be a single benefit based upon combined railroad and non-railroad employment, because the social security benefit formula has been weighted to afford proportionately larger benefits to low-wage and short-service workers. Even though they basically are social security benefits, the costs of those windfall benefits have been charged to the Railroad Retirement System, and this burden has played a major role in the projected financial crisis of the system.

The Commission on Railroad Retirement concluded that these windfall dual benefits are inequitable in the sense that a minority of railroad employees receive an advantage not available either to the majority of career railroad employees or to employees in other industries. The Commission was of the view, however, that any plan to eliminate windfall dual benefits should include protection of the equities of existing employees with claims upon such benefits.

We are in accord with these basic findings of the Commission. At the same time, we wish to make it clear that our recommendations on this subject -- and we believe the Commission's recommendations -- imply no criticism of dual beneficiaries, as opposed to windfall dual benefits. Dual beneficiaries were perfectly entitled to secure benefits provided under existing law. That is why their equities should be preserved.

But agreement in principle, while essential, does not provide a sure answer as to how the principle is to be applied to the facts of particular situations. The Negotiating Committee struggled for months over the question of how dual benefits could be phased out on an equitable basis. Our conclusions in the main, though not in all respects, accord with those of the Commission. Our recommendations are these:

- First, the dual benefits of beneficiaries retired as of January 1, 1975, would continue to be paid in full. However, the so-called "windfall" part of those dual benefits -- the part a beneficiary would not receive were a single social security benefit calculated on the basis of his combined railroad and non-railroad service and earnings -- would not be subject to future social security increases. This is the approach recommended by the Commission.

Second, employees without sufficient railroad and non-railroad service by January 1, 1975, to have fully qualified under both systems would not be entitled to windfall dual benefits. All such employees, upon retirement, would receive a single benefit calculated on the basis of their railroad and non-railroad service. Again, this is what the Commission recommended.

Our views differ from the Commission's only with regard to employees who have sufficient service to be fully qualified under both systems but who have not yet retired. Under our recommendations, this group would be divided into two classes. The first would be those employees with a "current connection" to the railroad industry -- 12 months of service out of the previous 30 months, as defined in existing law -- and those with 25 years or more of railroad service even though without a "current connection." The Negotiating Committee feels that this group is entitled to be in the same situation as were the retired dual beneficiaries during their period of active service. Accordingly, those non-retired employees would receive future social security cost-of-living increases on their dual benefit until they retire. Upon retirement, however, the "windfall" part of the dual benefit would be frozen, as in the case of dual beneficiaries retired as of January 1, 1975.

The second group would be employees without a current connection to the railroad industry and without 25 years or more of railroad service. Such employees, the Negotiating Committee believes, have a less strong equitable claim than those who have remained with the industry. Accordingly, the Committee recommends that they not receive windfall dual benefits unless they had fully qualified under both systems by the close of the year in which they left railroad service. If they had so qualified at that point, then the Committee recommends that their windfall dual benefit, calculated as of the time they left railroad service, be subject to cost-of-living social security increases after 1974 and prior to retirement. Such windfall benefit would be frozen upon retirement, as is the case of the other beneficiaries covered above.

An employee who does not qualify for such a dual benefit will be entitled upon retirement (or his survivors if he should die before retirement) to a refund of employment taxes paid prior to January 1, 1975 in excess of what he would have paid if all his employment had come under the Railroad Retirement Act.

We have been advised by the Railroad Retirement Board that the projected deficiency of the Railroad Retirement fund, under the existing law, is 9.06% of taxable payroll annually, calculated on a level basis. Based on data supplied by the Board, it is estimated that these measures, if put into effect, would reduce that projected deficiency by about 2.5% of taxable payroll annually, calculated on a level basis.

2. A New Benefit Formula and the "Two Tier System." The Commission on Railroad Retirement recommended that a new benefit formula be adopted. It believed that the existing formula was unduly complex and also that, projecting results over the next 30 years or so, the formula would produce benefits that would bear an unrealistic relation to wage levels. The Commission also recommended that a so-called "two tier" system be adopted, under which railroad employees would be brought directly under the Social Security System -- the first "tier" -- and would receive in addition a supplemental retirement benefit calculated on a different basis -- the second "tier."

The Negotiating Committee does not disagree in theory with the "two-tier" recommendation of the Commission. If the Railroad Retirement System had first been established in 1975, such an approach might very well have merit. However, railroad employees have lived for almost four decades under a different system. In such circumstances, it is our judgment that sharp changes in the form of the retirement structure should be avoided if possible. In particular, we consider it important, in terms of the confidence that employees repose in the system, that all the retirement benefits be administered by the Railroad Retirement Board. Accordingly, the Committee does not recommend adoption of a two-tier system in the sense visualized by the Commission.

On the other hand, the Committee does agree with many of the principles underlying the Commission's "two-tier" recommendation, as well as with its general observations about need for a revised benefit formula to replace the current railroad retirement formula. The Negotiating Committee believes that the basic goals set by the Commission can be met within the framework of the existing structure of the Railroad Retirement System.

The new Railroad Retirement formula, as recommended by the Negotiating Committee, would have as one major component a benefit calculated on the basis of the Social Security formula as applied to all of the employee's wages and service, non-railroad as well as railroad. All future increases in social security benefits would be applied, not only through this component of the new formula to people who retire after the increases, but also to people on the retirement rolls in the same way as if they were Social Security beneficiaries. Any new classes of Social Security benefits would be passed through to the Railroad Retirement System.

Under the financial interchange with Social Security, which we recommend retaining in place of direct Social Security payment and administration of this phase of the Railroad Retirement program, this Social Security component would be financed by Social Security as at present, and railroad employer and employee Social Security equivalent taxes would be transmitted to Social Security as at present. Therefore, these changes in the Railroad Retirement System would have no effect, one way or another, on the Railroad Retirement fund.

However, when taken together with the phase-out of dual benefits, we believe that these changes would accomplish the principal goal of the Commission's "two-tier" recommendation -- a clear and permanent isolation of a Social Security component of Railroad Retirement benefits, from the additional component riding on top of Social Security and financed by the railroad industry. While the approach we recommend to attain that goal is different from the Commission's, we concluded, after prolonged consideration, that a large value should be placed upon preserving the long-established basic structure of the Railroad Retirement System.

This brings us to our recommendation with respect to the second part of the Railroad Retirement formula -- the part that would ride above the Social Security level of benefits and that is commonly called a "staff" level of benefits.

We agree, as noted above, with many of the Commission's criticisms of the existing formula, which is based strictly on career earnings, which is unduly complex, and which suffers from various anomalies. At the same time, we believe that, as a practical matter, the problem cannot be approached in disregard of the fact that the Railroad Retirement formula has been in existence for decades.

Accordingly, we have recommended as the second component of the new Railroad Retirement formula -- the "staff" part -- a future service formula under which this additional benefit would be calculated upon two factors, career railroad earnings and a flat dollar amount per year of service. In the Negotiating Committee's judgment, this formula would combine the advantages of the existing formula with the advantages of retirement benefit formulas prevalent in other industries, and in addition would not represent too sharp a break with the past.

Devising an appropriate transition from the old formula to the new formula was a formidable problem. The Committee was quite aware of the desirability of insuring that present employees would not be disadvantaged. Accordingly, the recommended formula first provides that benefits based on service prior to the changeover date will be computed under the old formula, so that the new formula will apply to future service only. The recommended formula also contains two transition elements -- a special credit for service prior to January 1, 1975, and an 8-year "grandfather clause" appplicable to all retirement benefits except dual benefits. Taken together, these features will insure that no employee retiring in the next eight years will receive less than he would under the formula as it exists today computed under the current limit on creditable compensation, and that, indeed, most career railroad employees retiring in the next several years will receive somewhat more benefits than under the old formula as so computed.

In addition, the new formula contains a cost-of-living escalation both for employees on the rolls and for active employees. As to the Social Security component of the formula, as noted above, the Social Security automatic cost-of-living increases, as well as any other Social Security improvements, would be passed through to railroad employees. As to the railroad benefit supplemental to Social Security -- the "staff" benefit -- there would be four cost-of-living adjustments during the six year period commencing January 1, 1975. For employees on the retirement rolls, the first of such increases would become effective for the month of June 1977 (payable as of July 1, 1977), and would be calculated on the basis of 32.5% of the preceding year's increase in the Consumer Price Index. There would then be similar adjustments payable July 1 of each of the following three years. For employees in active service, the staff part of the benefit formula would first be adjusted on January 1, 1978, and the adjustment would be calculated on the basis of 65% of the preceding year's increase in the Consumer Price Index, with an offset for increases in maximum creditable taxable compensation. There would then be three similar adjustments in the following three years.

This introduction of a cost-of-living escalator is a recent innovation so far as major private industry pension plans are concerned. It is similar to the approach taken in the recent Aluminum Industry settlement, which was precedent-setting. After lengthy deliberation, the parties agreed that it would be appropriate to adopt the proposed cost-of-living escalator for a limited period. The new formula, together with the four cost-of-living increases for the six year period, represents on the one hand recognition of the fact that, under the basically new approach to the system the parties have recommended, the staff benefit program is closely analogous to private industry supplemental pension programs, and on the other hand the desirability of maintaining reasonable continuity in a federally mandated program.

Insofar as the deficiency is concerned, while of course the cost-of-living adjustments will entail costs in the future that, under the parties' recommendations, the railroad industry will have to assume at that time, at the present time the substitution of the new formula, even with its transition protective features, would reduce the deficiency by about 5% of taxable payroll per year on a level basis. The reason essentially has to do with certain features of the actuarial model used by the Railroad Retirement Board to project the financial state of the fund.

3. Benefit inequities. The Negotiating Committee recommends three benefit improvements designed to rectify inequities in the existing benefit structure.

The first two such improvements are aimed at making fully effective the early retirement provision of last year's legislation. Under that provision, an employee is entitled to retire with his full basic benefit upon attaining age 60, provided the employee has 30 years of service. However, the employee does not receive the so-called supplemental benefit -- which ranges in net terms between $23 and $43 -- until the employee reaches 65, nor may the spouse receive any spouse benefit until the employee reaches age 65. This is a significant deterrent to early retirement. Accordingly, the Negotiating Committee proposes that effective July 1, 1974 an employee retiring at age 60 or thereafter with 30 years of railroad service would become eligible for the supplemental benefit, and spouses of such employees would be eligible for spouses' annuities upon reaching age 60. The cost of these changes would be approximately 1% of taxable payroll per year on a level basis.

The third change would increase the benefits received by widows and other survivors. At present, the vast majority of such beneficiaries receive benefits calculated upon the basis of 110% of the comparable Social Security benefit. The Commission on Railroad Retirement believed these benefits should be increased. The Negotiating Committee recommends that these benefits be calculated on the basis of 130% of Social Security rather than 110%. The increase would go to widows and other survivors now on the retirement rolls as well as to future beneficiaries. The cost of this increase in these benefits would be approximately 2% of taxable payroll per year on a level basis.

4. Phase-out Costs of Windfall Dual Benefits. The Joint Negotiating Committee, having recommended that windfall dual benefits be phased out in a

way consistent with protecting equities of existing employees, also recommends that the financial interchange with Social Security be adjusted so that the Social Security fund, rather than the Railroad Retirement fund, will bear these phase-out costs of windfall dual benefits.

The Negotiating Committee regards this matter as bearing in an important way upon the question of equitable adjustments of the retirement system. The Committee, having examined this matter intensively for many months, believes that the existing financial interchange arrangement with Social Security, under which the costs of windfall dual benefits are charged to the Railroad Retirement account, has worked a grave injustice to the railroads and to their employees, who depend for retirement security upon the adequacy of the Railroad Retirement fund. Unless a proper allocation of these costs is now established, the Railroad Retirement fund will be jeopardized notwithstanding the economies that would be generated by the Negotiating Committee's other recommendations.

The background of the problem is this: In 1951, legislation was enacted that was designed to integrate, in a financial sense, the Social Security and the Railroad Retirement systems. Under that legislation, basically, an interchange of taxes and benefits between the two systems was established. Social Security was to receive from the Railroad Retirement system all employer and employee taxes calculated on the Social Security tax level. At the same time, Social Security was to reimburse Railroad Retirement for the cost of railroad retirement benefits to the extent that the beneficiaries, under the Social Security benefit formula, would have received Social Security benefits. In other words, the notion was that neither the Railroad Retirement System -- by way of benefit costs -- nor the Social Security System -- by way of loss of tax income -- would suffer by virtue of the fact that railroad employees were not formally under the Social Security System.

The only flaw in this interchange system -- and it has now turned out to be a large flaw indeed -- has to do with dual benefits. Consider the matter in terms of the following example: A railroad employee with 15 years of railroad service leaves the industry and works for another 15 years in an industry directly covered by Social Security. His and his railroad's Social Security taxes, and his and his new employer's Social Security taxes, are all transmitted to the Social Security fund. Upon retirement, he receives a Railroad Retirement benefit that includes a Social Security component of, say, $125.00. He also receives a "dual" benefit by virtue of his non-railroad employment of, say again, $125.00. And, under the Social Security formula, the sum of these two benefits is greater than it would be if a Social Security benefit were calculated on the basis of combined railroad and non-railroad service. This "windfall" element might be, say again, $50.00.

Since all of the Social Security taxes on both his railroad and his non-railroad employment have gone to the Social Security fund, one might suppose that both the Social Security component of his Railroad Retirement benefit and his outside industry "dual" benefit would be paid for by Social Security. But that is not the way the 1951 legislation has been construed. Rather, though the Railroad Retirement fund receives none of the tax income, it has been charged with the windfall portion of those dual benefit costs. In reimbursing the Railroad Retirement fund, Social Security deducts the

Social Security benefits that it has paid, so that the "windfall" element of those benefits serves to reduce the amount of the reimbursement to the Railroad Retirement fund that otherwise would have been made.

When the financial interchange was enacted in 1951, the Congress did not focus upon this matter. The cost of windfall dual benefits at that time was relatively small because of the previous state of Social Security legislation and of restrictions (since repealed) upon dual benefits. But in the intervening years the problem has grown dramatically, so that the result of this inequitable, in our view, distribution of costs has shorn the Railroad Retirement fund of some 4 billion dollars. To put it differently, the fund would be almost twice as large as it is today, and there would be no "crisis," had the Railroad Retirement System not absorbed the cost of the windfall dual Social Security benefits. It is plainly, we suggest, time for a change.

It is true that, if our recommendation were accepted, the Social Security System would pay to protected dual beneficiaries, during the phase-out period, more than it would pay to other employees with the same service and earnings. But, unless dual benefits were terminated immediately on January 1, 1975, in all respects, someone will have to pay for the phase-out costs. And no one, we're sure, would suggest immediate termination of dual benefits. Accordingly, the question becomes one of selection of the most equitable alternative.

Since the windfall dual benefit basically is a Social Security benefit and derives from Social Security service rather than railroad service, it scarcely would be appropriate to charge the costs against the railroads who have not benefitted from that Social Security service. And since, as the Commission observed, if employees are charged with part of the costs, the burden would fall in large measure upon long-term railroad employees -- and all future employees -- who are not advantaged by dual benefits, that alternative also seems thoroughly unattractive. The last, and most reasonable, alternative is to adjust the financial interchange so that the Social Security fund will bear these remaining dual benefit costs. At root, the dual benefit problem arises from a defect in the Social Security law. As with other such defects, it is appropriate that the expense of correction be carried by the Social Security fund. Moreover, there is persuasive precedent. Under the Federal Civil Service retirement program, as well as under certain state and local government employee retirement programs, employees can qualify for Social Security dual benefits. The full cost of such dual Social Security benefits is assumed by Social Security.

5. Placing financial interchange on a current basis. At present, the financial interchange is on a cash basis rather than an accrual basis. This results in an 18-month lag in transmittal to the Railroad Retirement fund of monies to which it is entitled. We perceive no just basis for this situation, and accordingly recommend that the interchange be placed on an accrual basis. This accords with the Commission's recommendation.

6. Incorporating the existing temporary features of the System. Beginning in 1970, and pending final resolution by the Congress of the problems besetting the Railroad Retirement System, benefit increases have been put into effect on a temporary, rather than permanent, basis. Those

increases, three in number, aggregated 45%. On a cumulative basis, they aggregate about 52%. In addition, under last year's legislation, the carriers assumed, on a temporary rather than permanent basis, the Railroad Retirement taxes that the employees had theretofore paid above the level of Social Security taxes. Accordingly, the carriers' taxes went to a 15.35% level, and the employees' taxes dropped to a 5.85% level.

The Negotiating Committee recommends, as part of its overall program, that these temporary arrangements, both as to benefit levels and as to tax levels, be incorporated into the new law.

7. Interim changes in Social Security Benefits. As noted in paragraph 2 above, the Committee proposes a pass-through of Social Security changes subsequent to December 31, 1974. The Negotiating Committee also recommends that the currently applicable Railroad Retirement Act be revised to provide that the dollar amount of any increases in Social Security benefits which may be made effective subsequent to June 30, 1974 and prior to January 1, 1975 will be passed through to railroad employees and beneficiaries subject to an offset for dual benefits, and that any other changes in Social Security benefits during this period will be extended to railroad employees and beneficiaries.

8. Summary. These are the principal recommendations of the Negotiating Committee. There are a number of other recommendations, mostly of a technical nature and all of considerably lesser importance. Since one of our two main charges was to treat with the projected deficiency of the fund, we recapitulate at this point what the results in those terms would be were our recommendations accepted.

The recapitulation, based upon data supplied by the Railroad Retirement Board, is as follows: Coupling the existing deficiency of about 9% of taxable payroll, on a level basis, with the additional costs of rectifying the existing inequities respecting widows, spouses, and supplemental benefits, the deficiency would be about 12%. However, the restrictions on dual benefits (about 2.5%), the new formula (about 5%), and the adjustment of the financial interchange respecting phase-out dual benefit costs (about 4%), together with a few other economies relating to other of our recommendations, should put the fund into a situation of long-term balance for the present. Under the recommended plan, additional costs would come into play in the future when cost-of-living increases are granted. Moreover, the next periodic valuation by the Railroad Retirement Board would of course be important. But the short of it is that, if the Negotiating Committee's recommended plan is put into effect, in the Committee's judgment the fund would be placed on a sound financial basis, and existing inequities would have been eliminated. Moreover, we wish to advise you that the parties have agreed that neither the railroads nor the unions will propose any future changes in the Railroad Retirement Act to become effective prior to January 1, 1978.

Conclusion. The Negotiating Committee is confident that its recommendations will be carefully considered by your Committee and the Congress, and is hopeful that such deliberation will demonstrate the soundness of the recommendations with respect to the merits of the issues involved. The Negotiating

Committee is fully aware that, on one or another issue, positions contrary to the recommendations can be advanced. We are aware of that because, important and controversial as these issues are, such contrary arguments have in fact been forcefully advanced by the parties during the many months of our discussions. Our principal hope, in that respect, is that due recognition will be given to the fact that the final test of the legislation will be whether, taking all issues into account, it represents a fair and sound approach to a permanent reformation of the Railroad Retirement System.

Finally, we would be remiss, in both a personal way and in terms of our obligation to advise Congress of the nature of our discussions, if we omitted reference to the expert assistance that has guided us in our work.

As you are fully aware, the problems we have dealt with are exceedingly complex. It is one thing for labor and management representatives to negotiate the staple ingredients of collective bargaining contracts -- wages and the like. It is quite another thing for them to attempt to accommodate their respective interests in connection with matters as baffling as the intricacies of the Railroad Retirement and Social Security Systems.

We are frank to say that, without the expert assistance we have received, it would have been extremely difficult for us to discharge the obligation placed upon us by last year's legislation. But we have had in full measure the expert assistance that was necessary.

To begin with, the Railroad Retirement Board, and its staff, has dedicated itself in a most extraordinary way to assisting us in the resolution of our problems. Beyond that, we have been graced by the assistance of two outside consultants -- for the unions, Dr. Robert J. Myers, for twenty-three years Chief Actuary of the Social Security Administration, and for the railroads, Mr. John W. Fisher, of Towers, Perrin, Forster & Crosby. They guided us through the intricacies of these issues and were able at crucial stages to suggest ways in which basic policy differences could equitably be compromised.

We look forward, with the assistance of those who have helped us forge our recommendations, to discussing these recommendations in detail with you, the Committee, and Congress.

Yours very truly,

William H. Dempsey
William H. Dempsey, Chairman
National Railway Labor Conference

Al H. Chesser
Al H. Chesser
Chairman, C.R.U.
President, U.T.U.

Hugh E. Greer, Vice Chairman
National Railway Labor Conference

C J Chamberlain
C. J. Chamberlain
Chairman, R.L.E.A.
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R Jones
J. R. Jones, Vice President-Personnel
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C. E. Mervine, Jr.
Senior Vice President-Personnel and
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G. S. Paul, Executive Vice President-
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Southern Railway System

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President-Labor Relations,
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Chessie System

H. C. Crotty
H. C. Crotty
President, B.M.W.E.

A. T. Otto, Jr.
President, R.Y.A.

C. L. Dennis
C. L. Dennis
President, B.R.A.C.

James E. Yost
James E. Yost
President, R.E.D.

C. J. Coughlin
C. J. Coughlin
President, B. of L.E.

BRIEF SUMMARY OF FUNDAMENTAL PRINCIPLES

1. Unified Railroad Retirement System, administered by the Railroad Retirement Board, comprised of a basic social security portion and a basic railroad retirement portion, to become effective January 1, 1975.

2. New benefit formula for the basic railroad retirement portion, based on a combination of (a) service prior to changeover date including an additive for each year of prior service and (b) for service after changeover date 1/2% of future average monthly taxable compensation, plus $4, for each year of service subsequent to changeover date. The new formula is designed to provide increased benefits for most career railroad employees retiring during the next several years. Moreover, a "grandfather" provision guarantees that those retiring during the next eight years will receive not less than the benefit computed under the current railroad retirement formulas and the current limit on creditable compensation. The formula also provides for four annual cost-of-living adjustments ranging from 32.5% to 65% of the increase in the Consumer Price Index in the year preceding each annual benefit increase. The first cost-of-living adjustment for beneficiaries on the rolls will be effective July 1, 1977, and for employees in active service the first cost-of-living adjustment will be effective January 1, 1978. As to the basic Social Security portion, which under the new formula will include both railroad and social security service and compensation, future increases in Social Security benefits will be applied on a 100% basis.

3. Dual benefits will be gradually phased out. Beneficiaries on the rolls will continue to receive their full dual benefits. The "nonwindfall" portion of the benefits will be transferred to the basic Social Security portion, thereby being subject to full future Social Security increases, and

the "windfall" portion of such benefits will be frozen. Employees who have a current connection, or who as of January 1, 1975 have 25 years of railroad service, and who are dually vested will have a dual benefit calculated as of changeover date, divided into "nonwindfall" and "windfall" portions and treated in the same way as dual beneficiaries on the rolls, except that during the years between changeover date and date of retirement the "windfall" portion will be increased by future Social Security cost-of-living increases. Upon retirement the "windfall" benefit will be frozen. Inactive nonretired dually vested employees will be similarly treated, except that the dual benefit will be determined on the basis of earnings and service up to the end of the year in which the employee last worked in the railroad industry, provided he had sufficient quarters of coverage to qualify for a Social Security benefit as of the end of such year.

4. Financial Interchange with Social Security to be adjusted to relieve the Railroad Retirement system of the cost of dual benefits during the phase-out period.

5. Limitation, corresponding to Social Security principles, on benefits in cases in which both husband and wife are railroad employees entering service after December 31, 1974.

6. Benefit changes effective January 1, 1975:

a. Supplemental annuities to be payable to employees who retire after June 30, 1974 who have attained age 60 and completed 30 years of service, preserving existing qualifications.

b. Unreduced spouse annuities to be payable at age 60 to spouses of employees who retire after June 30, 1974 and who have attained age 60 and completed 30 years of service. Reduced spouse annuities to be payable at age 62 to spouses of employees retiring after December 31, 1974 at age 62 with less than 30 years of service.

c. Widow and survivor benefits based on overall Social Security minimum to be increased from 110% to 130% of Social Security survivor benefits.

7. Miscellaneous provisions:

a. Residual Railroad Retirement benefit to be frozen as of January 1, 1975.

b. Lump sum benefit to be frozen as of January 1, 1975 for retired and active employees; such benefits to be payable on Social Security basis for new entrants or for existing employees not entitled to such a benefit on such basis as of January 1, 1975.

c. Social Security earnings limitation to apply to only a defined portion of the Social Security component of benefits.

d. Employees not vested for dual benefits will receive at retirement any "excess" employee tax contributions.

e. Provision of a reasonable cap on benefits.

f. The Financial Interchange will be placed on an accrual basis in place of the present cash basis.

8. Employees will not be required to make any contributions to the railroad retirement fund in excess of social security tax levels. Any changes in Social Security benefits made effective after December 31, 1974 will be passed through to Railroad Retirement beneficiaries.

9. Neither the unions nor the carriers will propose or support any future changes in the Railroad Retirement Act to become effective before January 1, 1978.

4/10/74

THE RAILROAD RETIREMENT SYSTEM
-- ITS STORY AND ITS PROBLEMS

HISTORY: The Railroad Retirement System was created by Congress in 1937. The legislation establishing it set railroad service apart from the Social Security System, which was then in its final stages of development in Congress.

Private industrial pension plans had been pioneered in the railroad industry, the first one being established in 1874. By the 1930s, pension plans on railroads were much more sophisticated than those of other industries, although the rail programs still had major problems.

During the mid-1930s, while the Social Security System was in its developmental stages, railroad workers were seeking a separate railroad retirement system that would not only continue but widen the scope of existing plans -- and bring them under the umbrella of a nationwide program.

Amendments in the years immediately following Congressional creation of the Railroad Retirement System incorporated social insurance features similar to those found in the Social Security System.

By 1946, the two systems -- Railroad Retirement and Social Security -- had begun a coordination process, whereby survivor benefits similar under both systems became payable only by the system determined to have jurisdiction. By 1951, this coordination had been expanded to provide for the transfer to Social Security of any credits earned by employees who die or retire with less than 10 years of service in the railroad industry.

LLOYD DUXBURY STATEMENT
ATTACHMENT II

Also provided was a guarantee that Railroad Retirement beneficiaries would receive at least as much from the Railroad Retirement System as they would have received from Social Security had all their railroad service been covered by Social Security.

It was also at this time that the financial interchange between the systems was established, to balance any shared benefit experience between the two systems. An unforeseen result of the interchange were so-called "dual" benefits under which some annuitants vested under both Railroad Retirement and Social Security could receive a larger combined benefit than if their earnings had been entirely under one system. This "extra" increment has become known as the "windfall" benefit.

Although this came about as a result of Social Security eligibility, the Railroad Retirement System was responsible for absorbing the "windfall" portion of the benefit. This created a drain on the system and constituted a major portion of the Railroad Retirement problem.

In 1974, the structure of Railroad Retirement benefits was completely reorganized by Congress, with two "tiers" being established, more fully coordinating them with Social Security benefits. The first tier is based on combined Railroad Retirement and Social Security credits, using Social Security benefit formulas, while the second tier is based on railroad service only and is comparable in concept to the private pensions paid workers in other industries. The first tier is financed by a tax on both employees and employers, while the second tier is financed by taxes on the railroad only.

In addition, provisions were made in the 1974 Act to eventually eliminate the troublesome windfall benefits, which had been sapping the system for years. The Act provided for the federal government to pick up the extra costs associated with the windfall benefits, although the amount paid by the government has, so far, never adequately covered the costs involved.

Basically, the 1974 Act eliminated the windfall for railroad employees who were not vested under both Railroad Retirement and Social Security before 1975. (In order to be eligible for dual benefit payments, an employee had to be vested under Social Security as of the end of 1974; and also have 10 years of railroad service before 1975 and either (1) 25 years of railroad service prior to January 1, 1975; or (2) some railroad work in 1974; or (3) a "connection" with the railroad industry either as of December 31, 1974, or at the time of retirement.)

WHAT IT DOES: The legislation creating the Railroad Retirement System simultaneously created the Railroad Retirement Board. The Board pays retirement and disability annuities to railroad workers who have at least 10 years of service in the industry. Benefits are also paid to spouses of retired workers and to widows, widowers, children and parents of deceased workers.

The Board shares with the Social Security Administration (SSA) the jurisdiction over payment of retirement and survivor benefits. If an employee had at least 10 years of railroad service, the Board has jurisdiction over payment of retirement benefits. If a railroad employee or his survivors do not qualify for Railroad Retirement benefits, the Board transfers the employee's credits to the SSA, where they are treated as Social Security credits.

In addition to payroll taxes paid by railroads and their employees -- the primary source of income for the Railroad Retirement System -- other sources of income include the financial interchange with the Social Security trust funds, interest on investments, and appropriations from general Treasury revenues provided as part of a phase-out of certain dual benefits. Funds also derive from a cents-per-work-hour tax -- paid by the railroads -- at a rate determined quarterly by the Board. The railroad contribution finances a supplemental annuity program for career employees.

MORE ABOUT THE RAILROAD RETIREMENT BOARD: The Board is an independent agency in the Executive Branch of the federal government. Its primary function is to administer comprehensive retirement-survivor and unemployment-sickness benefit programs for railroad workers and their families.

These functions are carried out under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

During fiscal year 1981, retirement-survivor benefits amounted to about $5 billion for approximately one million annuitants. while unemployment-sickness benefits during the same period ran abut $260 million to over 200,000 beneficiaries.

In recent years, the Board has accepted the additional duties of administering certain employee protection measures provided by other federal railroad legislation -- including the Regional Rail Reorganization Act, the Milwaukee Railroad Restructuring Act and the Rock Island Railroad Transition and Employee Assistance Act.

The Board depends on railroads and labor groups to keep railroad workers informed about various benefit programs and any changes that might occur. Periodically, the Board holds informational programs for railroad management and labor officials to acquaint them with details of the benefit programs.

The Board also works closely with both management and labor in helping find jobs for unemployed railroad personnel, thereby helping reduce the costs of the unemployment benefit program.

The Board has numerous field offices around the country where RRB personnel explain benefit rights and responsibilities to individuals, help individuals apply for benefits and answer questions concerning retirement and benefit programs.

The Board has three members, appointed by the President of the United States, with the advice and consent of the Senate. One member is recommended by the railroads, one by railroad labor organizations and the third -- the chairman -- is appointed to represent the public interest. Members of the Board serve five-year terms, which expire in different years.

THE RAILROAD UNEMPLOYMENT INSURANCE ACT (RUIA): Under RUIA, the Board pays unemployment benefits to railroaders who, although not working, are willing and able to do so. Also paid are sickness benefits to railroaders who are unable to work because of injury or illness. The Board operates a placement service to help unemployed railroaders find employment.

The railroad unemployment-sickness benefit program is financed entirely by taxes on the railroads.

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Prepared By:
Office of Information and Public Affairs
Association of American Railroads
July 8, 1981

Chairman PICKLE. You have presented very forthright testimony. I think your testimony will be a factor in our consideration.

Does the committee have any questions this morning?

Before you leave us, Mr. Duxbury, let me ask you, you said that the railroad committee in 1974 did not properly fund the retirement system and that Mr. Hopkins and Mr. Dempsey said then that if it is not enough, we will see to it that we will raise the extra money for the funding. I don't know whether they were speaking for management, for employees, but they made a very strong statement in your testimony.

Your testimony is that they did not fund the program properly in 1974, nor again in 1981 when they put in a 40-percent cut. And you are saying that this present proposal is not properly funded, is that correct?

Mr. DUXBURY. Well, Mr. Chairman, I don't have any statistics or capacity or abilities to make that determination, but I raise the question because I think Congress has to raise the question of whether the present package does, in fact, properly fund.

Chairman PICKLE. I thought you said a few minutes ago that the present package does not properly fund?

Mr. DUXBURY. It does not fund it if it is taking money away from current retirees.

Chairman PICKLE. But under the catch-22 you propose it does take the money away from the current retirees, so your statement is still that the present proposal is not properly funded.

Mr. DUXBURY. No, it is not properly funded.

Chairman PICKLE. And your recommendation is in order to make it properly funded that industry, management should increase their contribution?

Mr. DUXBURY. Yes.

Chairman PICKLE. Do you recommend that you pass any additional tax on the part of the employee?

Mr. DUXBURY. I would not take any position on that because I do not pretend to represent any working people.

Chairman PICKLE. Well, you don't represent any working group and neither do you represent management, but you are saying that for management to pay for it, you have a position on that, but you don't on the employee?

Mr. DUXBURY. Management made a commitment.

Chairman PICKLE. Yes, but did they make it also in conjunction with the employee agreement in 1974 and 1981?

Mr. DUXBURY. No. In both 1973 and 1974, as I understand this history, Mr. Chairman, and both labor and management are quick—and I think justifiably so—to say that the Government made a commitment in 1973 and 1974 to pay the cost of the phaseout of the dual benefit, but at the same time, industry made a commitment to pay the full cost of tier II. And the record is replete with those commitments.

Chairman PICKLE. I think we can agree to that.

Mr. DUXBURY. And at that time, it was under that employees would not pay to tier II.

I have included in my statement a copy of an informational statement produced by the Association of American Railroads, and in describing what had happened in the 1973, 1974 restructuring, and this publication came out in 1981, if I remember correctly, but in describing the restructuring of 1973, 1974, this publication said:

> The first tier is financed by a tax on both employees and employers, meaning the social security portion, while the second tier is financed by taxes on the railroad *only*.

I am not in a position to make any statement with reference to what employees should or should not pay. They are adequately represented and well represented.

Chairman **Pickle**. But it is your fair testimony that management did underfund it and they ought to fund it additionally at this point.

Mr. **Duxbury**. The facts prove that the 60/30 rule was not properly funded.

Chairman **Pickle**. Well, thank you.

We have heard testimony this morning by some of the members that the social security program is, in a way, responsible for the plight of the railroad retirement system and they are saying that the Government held back and did not give them their full reimbursement through the interchange.

I keep asking myself how they reason that. They keep repeating it and I ask myself, if the railroad retirement system had gone on by itself and never been associated with social security, they would have their own program and we would have our own program.

But because we were asked to coordinate it and we did to help out, then we have to assume the responsibility. And over a period of some 20 years, from 1951 to 1954, we paid out through the interchange system $20 to $21 billion from our fund, and yet we get very little reimbursement and yet the accusation by some is that social security has caused the problem.

I try to ask myself, where are the facts? The facts are that we have paid out some $21 billion more than we would have to.

I have to ask myself, like you are asking yourself now, the present retirees are entitled to get the benefits but we are all in the position, that in good faith everybody passes legislation and reached agreement years ago that we thought would work. We hoped it would. It has not. Now, everybody has to somehow find a way.

Mr. **Duxbury**. There is no bad faith any more.

Another aspect of the social security matter, which I find interesting, I paid into social security 20 years before I went to work for the railroad and, of course, when I went into the railroad, I went under the railroad retirement for the first time.

Well, at the time of this 1973, 1974 act, which I did what I could to get passed, because my railroad company for which I worked then wanted it, so I helped to get it passed. And because I did not have 10 years of railroad retirement at the end of 1974, I was cut out of what is called the dual benefit or the windfall benefit. But one of the things that interests me is I paid into social security for 20 years and then I paid into railroad retirement for 12 years.

What happens to my 20 years of social security money? That had to go into the social security account. None of it went to railroad retirement, and yet when I start to draw at age 65, where does this come from?

There must be many thousands of individuals affected like I was, who had made substantial contributions to social security and the railroad retirement fund and will never get the benefit of those contributions.

Chairman PICKLE. Well, I assume that largely you are asking a rhetorical question. You will get tier I benefits.

Mr. DUXBURY. I think it is a factor to be taken into consideration as to what are the offset gains the social security and railroad retirement, because I think that social security did get some benefits out of that elimination of the dual benefit.

Chairman PICKLE. Well, if there are no other questions, again I want to thank Mr. Duxbury. You have given us very good testimony.

We will resume again at 2:45 in B-318. Those who wish may join us again at that time.

[Whereupon, at 1 p.m., the subcommittee recessed, to reconvene at 2:45 p.m.]

Chairman PICKLE. The subcommittees can come to order and we will proceed with our witnessses.

This afternoon our witness is Mr. David Stockman, our embattled Director of the OMB. We are pleased to hear you this afternoon.

Before we proceed, I want to ask Chairman Ford if he has any statements to make at this point?

Mr. FORD. Mr. Chairman, I would like to take this opportunity just to welcome the Director of the Office of Management and Budget before the subcommittees here today. I look forward to the testimony in this area of the railroad pension plan itself. We are delighted to have you back on the Hill once again.

Chairman PICKLE. Mr. Stockman, I would ask you to proceed. We had a very interesting hearing this morning. I don't know if you have been briefed. We had some forthright testimony and we had some hedging and we had a few little cries of surprise, they said. But we must proceed with some kind of solution so we will be anxious to hear what you have to say.

STATEMENT OF HON. DAVID A. STOCKMAN, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY STEVE LEIBERMAN AND FRED UPTON

Mr. STOCKMAN. Well, thank you very much, Mr. Chairman. I am pleased to be here with two subcommittee chairmen and the wisest Republican on the Ways and Means Committee. I feel that we can get some progress made here and some business accomplished today.

I have a quite lengthy statement that goes through our whole position and analysis of the issue and I would like to submit it for the record and take maybe 5 minutes to summarize the key things I want to bring to your attention and be responsive to your questions.

Chairman PICKLE. That will be satisfactory.

[The prepared statement follows:]

STATEMENT OF HON. DAVID A. STOCKMAN, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman, and Members of the Committee, I wish to thank you for inviting the Administration to testify on proposals to solve the acute financial crises facing two systems of vital importance to the rail sector. These joint crises result from the serious underfunding of both the rail industry pension system and the rail industry unemployment insurance system. These systems -- and their financial solvency -- are of vital importance to 1 million former rail workers, their families and survivors, to about 80,000 rail UI beneficiaries and their families, and to the 388,000 active rail employees. Your Committee, with jurisdiction over social security, taxes, and unemployment compensation, must play a vital role in fixing these troubled systems.

This hearing is a positive step in developing sound, enduring, and evenhanded solutions for these financially threatened systems. As you and the members of this Committee know, there are no easy solutions. The underfunding of both systems is real -- and the gap between income and outgo is large in each instance. The gaps cannot be closed with mirrors or accounting gimmicks: only real reforms -- and real contributions from those involved -- can assure solvency. Resorting to budgetary gimmicks -- general fund loans and grants -- would significantly increase the Federal deficit over both the CBO budget "baseline" and the President's budget.

As I testified in March before the House Energy and Commerce Subcommittee on Commerce, Energy, and Tourism and in April before the Senate Labor and Human Resources Committee, we invite all affected parties to sit down together and begin on an expedited basis a process of discussion and compromise similar to that which proved so successful in social security. I am meeting with rail labor and management to that end.

I firmly hope -- and believe -- that we can work together to fashion a responsible, fair, and enduring solution. Like the National Commission on Social Security Reform bipartisan accord, it will be a compromise; one in which everyone gives up something but one in which the Nation wins. As shown in Table 1, 77% of the NCSSR solution came from increased contributions and benefit restructuring. Only 23% was derived from intra-budgetary transfers. The rail labor-management agreement relies on the Treasury to provide 56% of its financing "solution," whereas the alternate proposal discussed later in my testimony (and similar to what I testified to in the House and Senate hearings) conforms to the National Commission's balanced approach, with 73% of the solution coming from affected parties.

Table 1
Sharing The Burden To
Solve Rail Pension Crisis

% of Savings from	Social Security Bill	Labor Management Request	Alternate Package
Intra-budgetary transfers...........	23%	56%	27%
New contributions or savings from public..............	77%	44%	73%

Background

Let me now briefly describe the current situation.

The rail sector receives unique treatment from the Federal government, as Members of this Committee well know. The rail industry pension is the only essentially private pension plan embedded in Federal statute and administered by a Federal agency, the Railroad Retirement Board.

Rail employees are the only private sector employees exempt from both social security and normal unemployment insurance. Instead, the rail sector provides social security equivalent benefits (frequently referred to as "Tier I") and rail industry specific unemployment insurance benefits, administered by RRB. In addition to these social insurance benefits, RRB administers an industry pension benefit ("Tier II") for former rail employees and sickness insurance benefits for current rail employees.

The existing railroad retirement and railroad unemployment insurance systems are essentially the result of previous labor--management agreements which were enacted as "consensual" legislation. Starting in 1951, a complicated transfer of credits scheme with social security, known as the financial interchange, was enacted at the behest of rail labor. The financial interchange was intended to provide additional funds to the railroad retirement system as a means of financing liberalized benefits designed to parallel expanded social security protections enacted in 1950. Railroad retirement was "reinsured" -- that is, had a portion of its costs paid -- by the social security trust funds. As conceived by the rail sector, social security would "neither win nor lose" from the exclusion of rail work from social security coverage.

Financing of Railroad Retirement

Each year, social security transfers about $2 billion to railroad retirement. Cumulatively, social security has transferred $20 billion to the rail industry pension fund. Railroad retirement, in turn, administers social security equivalent benefits for former rail workers, their families and survivors.

Railroad retirement receives from rail employers and employees the equivalent of social security payroll taxes, estimated to total $1.5 billion in FY84. These rail "Tier I" pension contributions are virtually identical to what the social security taxes would have been. The only difference is that social security taxes are collected on an annual wage base, but railroad "Tier I" pension contributions are figured on a monthly wage base equal to one-twelfth of the annual social security wage base. This discrepancy robs railroad retirement of about $50 million each year in pension contributions; it can also inadverently lower a worker's benefits.

Rail employers contribute $1.2 billion to their industry pension, with rail employees contributing $.2 billion. These "Tier II" pension contributions were formerly on the same wage base as the "Tier I" contributions. As Table 2 shows, lowering the "Tier II" wage base below the "Tier I" level, which started in 1979, causes a steadily increasing revenue drain on the rail industry pension fund.

Table 2
Rail Pension Revenue Loss From Lowering Tier II Wage Base

Year	Social Security Wage Base	RR Tier II Wage Base*	Rail Pension Revenue Loss ($ in millions)
1978	$17,700	$17,700	--
1979	22,900	18,900	100
1984	37,500	28,200	200
1988	47,400	35,700	220

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*Displayed on an annual rather than monthly basis.

The 1981 Amendments to the Railroad Retirement Act authorized the rail industry pension fund to borrow from the general funds in the Treasury. The amount of the borrowing was limited to the projected amount of that year's financial interchange transfer, so as to insure repayment which the 1981 Amendments mandated. Table 3 summarizes the current law income and outgo of the rail industry pension fund.

Table 3
Status of Funds FY84
Railroad Retirement Account
Current Law

	($ in millions)
Cash Income:	
Social Security Equivalent taxes:	
Rail employers	770
Rail employees	770
Industry Pension Contribution:	
Employer	1,145
Employee	194
Supplemental annuities (employer)	166
Financial Interchange with Social Security	2,127
Repayable general fund advances for benefits	2,324
Interest paid by Railroad Unemployment Insurance	79
	7,575
Cash Outgo:	
Social Security Equivalent benefits	4,006
Industry Pension:	
Current Services -- Unreduced amount	(1,688)
Current Law -- With Section 22	1,118
Supplemental annuities	123
Administration	56
Payment of general fund benefit advances	2,110
TOTAL Cash Outgo	7,413
TOTAL With Full Entitlement	(7,983)
Lending to Railroad Unemployment Insurance	315

Benefit Preservation Mechanism - Section 22

As part of the major restructuring of railroad retirment in 1981, the Congress added a new "Benefit Preservation" provision to the Railroad Retirement Act. Under this Section 22, the Board is required to report to the Congress and the President by April 1 if it projects that the rail industry pension fund, after exhausting its borrowing, will not be able to finance full benefits in the upcoming fiscal year. Section 22 mandates that RRB promulgate regulations imposing a pro rata reduction on industry pensions so that (i) full social security equivalent benefits be paid and (ii) that the same level of industry pension benefits be paid each month. The Board reported on February 18 that it will have to reduce the Tier II portion of the monthly rail industry pensions by 40% starting on October 1, 1983.

In addition to notifying the Congress and the President of impending cutbacks, Section 22 prompts the parties to negotiate a solution to the problem. The Ways and Means Committee describes this pro rata reduction requirement as "designed to protect the Federal Government primary responsibility for payment of social security benefits" (Background Material and Data on Major Programs Within the Jurisdiction of the Committee on Ways and Means, P. 547). Section 22 serves a critical role in protecting beneficiaries by guaranteeing that at least their social security level of benefits -- which are, after all, paid for by the social security trust funds -- will be maintained in full. The Administration strongly opposes any tampering with Section 22 since this is tantamount to tampering with the social security benefit guarantee.

Railroad Unemployment Insurance - Structural Breakdown

Section 22 only directs the parties to address railroad retirement. It does not require them to focus on rail unemployment insurance. Yet, the crisis in rail UI is every bit as great. In fact, the funding imbalance between current income and current outgo is proportionately greater than in railroad retirement and will mount year-by-year. Whereas rail UI benefit levels were among the highest available to any worker in 1976, workers in 42 States now qualify for higher benefits than rail workers. Yet, any increase in rail UI benefits would be unthinkable because that would add to the existing financial hemorrhaging.

Rail Labor--Management Request

By seeking additional pension contributions and restraining benefit costs, the rail labor and management request incorporated as part of H.R. 1646 moves in the right direction. However, it does have serious deficiencies which have to be corrected before an acceptable package would emerge.

As Table 4 demonstrates, 56% of the parties' proposed rail pension fund "solution" comes from general fund loans and grants. This approach is unacceptable because it would increase the deficit by almost $1.5 billion over the next six years and place a large, inappropriate burden on all other American taxpayers. Fundamentally, the parties' request fails to solve the structural imbalance between rail industry pension revenues and benefits. Rail industry pension outgo exceeds income under their optimistic assumptions, even assuming the full "savings" from the parties' request, assuring that the rail industry pension funding crisis will return in a few years. However, the "up-front" cash from Federal loans and grants is used by the parties to mask this fundamental imbalance.

Table 4
Distribution of Savings in Rail Labor/Management Proposal

Category	1983-88 Savings ($ in millions)	Percent of Savings
Retirees:		
60/30 and DI reform..........	480	(5%)
COLA Delay...................	70	(1%)
Tier II COLA offset..........	880	(10%)
Tax on Pension...............	500	(6%)
SUBTOTAL, Retirees........	1,930	22%
Rail Employees:		
Increased contributions of 2.25% over 1984-86...........	785	9%
Rail Management		
Increased Contributions of 3.5% over 1984-86	1,170	13%
General Fund -- Taxpayer's		
Windfall	2,069	(23%)
UI Loans	1,805	(20%)
General fund borrowing against interchange.........	1,121	(13%)
SUBTOTAL, General Funds...	4,995	56%
GRAND TOTAL.................	8,880	100%

Improving the Equity of the Rail Sector's Request

The rail sector request is inequitable to rail retirees as well as to the American taxpayer. While the million retirees feel the burden of their sacrifices starting this July 1, rail employers and rail employees remain unaffected for 14 months, until July 1, 1984. It is unfair not to share the burden of saving the rail industry pension more equitably among the directly affected parties: rail labor and management as well as rail retirees.

Lessons from 1981 Railroad Retirement Amendments

The 1981 rail pension restructuring amendments, enacted at the parties' request, were to make railroad retirement financially secure for at least a decade -- even under so-called "worst case" assumptions. As we are all painfully aware, they failed.

The amendments failed for the same reason that the 1977 Social Security Financing Amendments failed to assure social security solvency: they were based on too optimistic assumptions. Necessary actions were gauged against what everyone hoped would happen, not against prudent, moderately pessimistic assumptions designed to insure against risk and assure the continued payment of benefits. Trust fund solvency -- and any solution intended to maintain solvency -- needs to be projected not under "best guess" assumptions, but under moderately pessimistic assumptions. The soundness of the proposed solutions must then be tested against more prudent pessimistic assumptions.

Lessons to Learn from the Bipartisan Social Security Accord

The National Commission on Social Security Reform assessed the social security system's problem using relatively pessimistic assumptions. Knowing the size of the problem, the bipartisan Commission developed a package of reform, one built on careful analysis, concensus building, and compromise. That package equitably imposed burdens on retirees, employees, and employers, and steadily rebuilds trust fund reserves.

Sizing the Solution for Railroad Retirement Solvency

The rail sector's request doesn't solve the railroad retirement funding problem, as Table 5 indicates. The rail industry pension remains seriously underfunded, kept afloat only by continuing loans. A prudent package solving the rail industry pension funding crisis would generate from $10 to $12 billion in the 1983-88 period, with $8 to 9 billion in real cash. This would provide an ample reserve margin and assurance that benefits will be paid without new legislative remedies. The parties' request, which would only generate $8.9 billion between 1983 and 1988, relies disproportionately on general revenue bailouts and has only $3.9 billion in real cash.

Table 5
Rail Industry Pension Assets
($ in millions)

		1988 Balance	1988 Outgo	% of Outgo
Optimistic:	Cash Balance 1/.......	737	7,019	11%
	Amount Owed...........	0		
Moderate:	Cash Balance 1/.......	0	7,019	0
	Amount Owed...........	397		
Pessimistic:	Cash Balance 1/.......	0	7,019	0
	Amount Owed...........	1,467		

1/ Reflects full effect of parties' request on rail industry pension. Excludes rail UI loans, which would be transferred to Treasury.

The Second Crisis: Railroad Unemployment Insurance

The rail unemployment insurance fund has borrowed $.5 billion between 1981 and today. It is projected to drain at least $1.8 billion by 1988.

The projections in Table 6 detail this dramatic underfunding. Even under the parties' most optimistic rail employment assumptions, which show rail employment effectively leveling off rather than continuing its average rate of decline over the past 4 decades, the interest on the rail UI borrowings exceeds annual rail UI income in 1988. Under the intermediate employment assumptions, annual interest costs exceed rail UI revenue in 1985.

Table 6
Financial Deterioration of the Rail UI Fund
($ in millions)

	1983	1984	1985	1986	1987	1988
New loans from RRB:						
High.....................	$365	315	278	221	189	154
Intermediate.............	$474	412	321	247	183	156
Total UI Debt to RRB:						
High.....................	$652	967	1,245	1,466	1,655	1,805
Intermediate.............	$760	1,172	1,493	1,740	1,922	2,078
UI Benefit Income:						
High.....................	$152	136	131	128	126	123
Intermediate.............	$150	125	116	111	108	105
UI Debt Service						
High.....................	$56	79	104	115	120	124
Intermediate.............	$62	95	125	137	141	143
Debt Service (% of income):						
High.....................	37%	58%	79%	90%	95%	101%
Intermediate.............	41%	76%	108%	123%	131%	136%

The projected upturn in the economy -- and the concomitant slowing of the decline in rail employment under optimistic economic conditions -- would not be sufficient to restore the financial health of the rail UI system. One reason for the underfunding of rail UI, it should be noted, is that the maximum monthly earnings subject to rail UI tax has remained frozen at $400 since 1959.

Along with the declining real value of the rail UI contribution base, rail employment has experienced equally sharp decline, as Table 7 shows. The parties' assume that the continuous, secular decline in rail employment will end under their high assumptions, and have based their "solution" on this assumption.

Table 7
Declining Rail Employment and UI Wage Base

Year		RR Employment (in thousands)		UI Wage Base Base (Real $)	Average Rail Worker Salary
1959......		949		400	$ 6,060
1970......		643		300	9,814
1979......		554		161	22,513
1981......		504		128	26,577
1982......		441		121	29,701
Proposed:	High	Intermediate	Low		
1983......	385	360	360	115	$32,446
1984......	370	335	310	110	33,695
1986......	355	310	260	100	37,390
1988......	345	300	245	92	41,233

Neither the labor--management request nor H.R. 1646 addresses the problems of rail UI. The insolvent rail UI system is not reformed or altered in the slightest -- except that the General Treasury is being told to assume, on a permanent basis, the debts of this bankrupt rail system. The American taxpayers have no prospect of repayment, even under the parties' most optimistic assumptions. Although characterized by the parties as a loan, this would amount to an outright general fund grant as unmet interest repayments accelerate the spiralling debt.

Such an approach is directly contrary to the decades old Federal--State partnership underlying the regular unemployment insurance system, which the parties cite as their purported "model." Even now, just as the beneficial effects of the building recovery begin to be realized and unemployment starts dropping toward normal levels, States are not only making all of their interest payments on their UI advances, they are taking steps to reduce the size of their indebtedness. Similarly, employers in each State have paid Federal unemployment insurance taxes, which, incidentally, are in most cases paid on a wage base of $7,000 or more -- not the $4,800 maximum wage base of rail UI.

Increasing the Federal Subsidy by Revising 1981 Windfall Agreement

The rail sector seeks to revise the comprehensive windfall restructuring enacted in 1981 at the parties' request. That comprehensive agreement entailed a series of compromises. It is inequitable to reopen only one element of the 1981 solution, as the parties' propose.

The 1981 Amendments were a clean break with the 1974 Act, which authorized the windfall subsidy. The changes sprang from widespread dissatisfaction with the 1974 Act resulting from the costs skyrocketing above the levels projected for 1976 through 2000, as Table 8 details.

Table 8
Windfall Financing System Prior to 1981 Amendments

	($ in billions)
Actual 1975-1981 Cost.................	2.8
Enacted Appropriations on level debt basis of 1974 Act.....................	1.7
Shortfall............................	-1.1

The parties were unhappy with the Carter Administration policy of limiting the Federal subsidy cost. Excess windfall costs constituted a drain on their rail industry pension fund. Unforseen Court decisions had further complicated the windfall issue. By 1981, estimated windfall costs tripled over the level estimated in 1974. As part of the overall solution, future windfall awards were significantly lowered and eligibility was restricted. Windfall subsidy costs were shifted from the rail industry pension fund to a new, general fund appropriation account. The authorization for windfall subsidy costs was made open-ended; windfall subsidy appropriations would occur for decades beyond the 1974 Act's cut-off date of the year 2000. The cost to the Federal government of future windfall subsidies was massively increased, as Table 9 indicates. Lastly, the 1974 "level annual cost" approach -- and its complicated financing mechanism which had proved unacceptable to the parties -- was completely revised.

Table 9
Restructuring Costs/Appropriations After 1981 Amendments

	($ in billions)
Cost with level annual payment, 1982 through 2000 (1974 Act estimates)	4.7
Cost of full windfall entitlement -- annual appropriation	6.3
Increased Federal cost	+1.6

A Prospective Windfall Change

The Administration strongly opposes reopening the past agreements to restructure windfalls. However, we would not oppose as an element of an overall package a provision which would clarify -- and reduce the contentiousness -- of future windfall appropriations. The Administration is prepared, as part of an overall, equitable solution, to convert the windfall to an annually appropriated entitlement, removing the authority to limit windfall benefits to the appropriated amount.

Increased General Fund Borrowing

Another element of the parties' 1981 package enacted by Congress authorized general fund borrowing, with the amount of the borrowing tied to the projected financial interchange payment. The Conference Report on the Economic Recovery Tax Act of 1981 stated:

> "The House bill provides advanced, limited transfers to the Railroad Retirement Account from the general fund in amounts necessary to make monthly benefit payments. In no case will the amounts outstanding at any time for any fiscal year under this authority exceed the estimated interchange transfer for that fiscal year."

The parties seek to revise "modestly" this 1981 provision, arguing in their February 24, 1983 letter to the Congress in support of their 1983 agreement that: "However, that authority has been construed so as to limit the amount of borrowing to the total amount owed by Social Security for the previous fiscal year." They seek to increase that loan authority by over $1 billion, with no statutory mechanism for -- or prospect of -- repayment.

Guidelines for an Acceptable Solution

I believe the following principles will guide us in developing an acceptable solution to the railroad retirement and railroad UI financing crises.

1) The solution must primarily come from the railroad sector. It must be a real solution, not one accomplished with mirrors. The solution cannot include permanent, open-ended General Treasury contributions, either subsidy appropriations or loans lacking the prospect of repayment. The precise mix of rail industry pension reforms or increased rail sector pension contributions is a matter best resolved through negotiations by the affected parties as part of an overall financing package.

2) The solution must not add to the Federal deficit. Any real solution, by definition, would not add significantly to the long-term Federal deficit since it would involve increased rail sector pension contributions or decreased rail sector pension payments.

3) The solution should build-upon the labor--management proposed elements, but the solvency improvement and even-handedness of the request should be enhanced. The burden should more equitably be borne by rail employers and employees, as well as rail retirees. When the rail retirees are to shoulder their burden to save the rail pension system, that is the time when rail management and labor should also begin their sacrifice.

4) The parties should clearly be authorized to bargain collectively rail pension issues along with other compensation questions under the Federal Railway Labor Act. This would help remove the Federal government from interferring in private sector negotiations and prompt resolution of all compensation matters concurrently.

5) As an element of an overall package which is acceptable, fair, and assuredly solves the financing crises not just under optmistic assumptions, the Administration would not oppose temporary "bridge" provisions which would relieve an immediate cash-flow catastrophe.

Alternative Package to Insure Rail Pension Solvency

Table 10 compares an alternate package to the parties' request. Building on the parties' request, it would assure sound rail industry pension financing. This alternate package would not impose an undue burden on rail retirees, rail employes, rail employers, or the American taxpayer. It would also solve the structural crisis facing the rail UI system in a manner which would entitle rail workers to higher UI benefits. (Rail sickness insurance benefits would remain unchanged.)

Elements from the Parties' Request

- Increase employer and employee pension contributions respectively by 1% and .75% in July 1984, an added 1% and .75% in July 1985, and a last 1.5% and .75% in July 1986, but with the final contribution increase permanent, not contingent;
- Restructure early retirement benefits for workers who will retire at 60 or 61 who retire after 30 years of service;
- Attribute the first 5% of future Tier I COLA adjustments to Tier II;
- Tax industry pension (Tier II) benefits under normal Internal Revenue Code rules; Secretary of the Treasury would be authorized to transfer amounts equal to the revenue collected to the rail industry pension fund through 1988;
- Conform to social security the disability waiting period, annuity beginning dates, and the timing of the Tier II COLA;

Table 10
Comparison of Proposals

	1983-88 Savings		Share of Saving	
	Rail Labor/ Management Request	Alternate	Rail Labor/ Management Request	Alternate
Retirees:				
Level rate for early retirement.....................	350	350	4%	3%
5 month DI waiting period......	130	130	1%	1%
Tier II COLA postponed.........	70	70	1%	1%
Attribute 5% of Tier I Cola to Tier II.....................	880	880	10%	8%
Tie industry pension COLA to trust fund solvency	---	460	---	4%
Tax industry pension under IRC rules.....................	500	590	6%	6%
SUBTOTAL............	1,930	2,480	22%	23%
Rail Workers:				
1% contribution increase 7/1/83..........................	---	600	---	6%
2.25% contribution increase 84-86..........................	785	785	9%	7%
Conform wage bases to social security......................	---	325	---	3%
SUBTOTAL............	785	1,710	9%	16%
Rail Management				
1% contribution increase 7/1/83..........................	---	600	---	5%
3.5% contribution increase 84-86..........................	1,170	1,170	13%	11%
Conform wage base to social security......................	---	1,920	---	18%
SUBTOTAL............	1,170	3,690	13%	34%
Federal Subsidy				
Windfall........................	2,069	---	23%	---
UI borrowing....................	1,805	---	20%	---
General fund borrowing..........	1,121	1,121	13%	10%
Federal State UI restructuring.	---	1,805	---	17%
SUBTOTAL............	4,995	2,926	56%	27%
GRAND TOTAL.........	8,880	10,806	100%	100%

Additional Elements

- Recognize the parties' underlying request that the financial interchange be placed on a current (i.e., prospective) basis. As a transition, authorize increased general fund borrowing while advancing the financial interchange by 1 month each year until fiscal year 1991, when it would be converted to a current basis and the borrowing authority would terminate. Modified in this way, the Treasury would be assured of repayment;

- Conform Tier I and Tier II wage bases to the social security wage base, effective July 1, 1983, ending revenue loss from the lower wage bases and modestly increasing rail pension benefits for future retirees;

- Increase employer and employee pension contributions by 1% each, effective July 1, 1983, so that labor and management begin shouldering their share of the sacrifices at the same time as the retirees assume their share;

- Tie the industry pension COLA increases to trust fund solvency by providing a COLA if industry pension reserves exceed 125% of the previous year's pension payments;

- Unify the unique rail UI with the regular Federal/State UI systems, with rail UI borrowing temporarily transferred from the rail pension fund to the Treasury. The rail UI system would be restructured to cover rail employment under the normal Federal/State UI rules starting January 1, 1984. Rail employees would become eligible for the typically higher

State UI benefits starting on July 1, 1985. Until July 1, 1985, rail employees would continue to receive rail UI benefits. The transition is designed to ensure that all parties involved in the merging of rail employment into State unemployment systems are treated fairly and equitably. The rail sickness insurance benefits and associated tax provisions would remain unchanged to finance continuing rail sickness insurance benefits and the payback of the general fund advances, with interest;

- Convert the windfall into an annually appropriated entitlement; and,
- Authorize the parties to bargain collectively rail pension issues along with other compensation questions under the Federal Railway Labor Act.

Table 11 compares the soundness of the financial solution under the parties' request and the alternative proposal for high and intermediate assumptions.

Table 11
Effect of Proposals on 1988 Railroad Retirement Trust Fund Balances
($ in millions)

	Labor/Management Request	Alternative Proposal
High Employment Assumption:		
• Balance..........	$737	$2,161
• % of outgo.......	11%	31%
Intermediate Employment: Assumption:		
• Balance..........	0	$1,027
• % of outgo.......	0	15%

Table 12 compares the unified budget effects of the parties' request and the alternative proposal.

Table 12
Comparison of Unified Budget Effect, FY83-88
($ in millions)

	Labor/Management Request	Alternate Proposal
Railroad Retirement:		
Increased Revenue (-)...............	-2,455	-5,990
Decreased Outlays (-)...............	-1,430	-1,890
Previously Unfinanced Benefits (+).....	+5,270	+5,270
Net Change in Deficit............	+1,385	-2,610
Unemployment Insurance:		
Increased Revenue(-) 2/	0	-763
Increased Outlays(+)................	0	0
Increased Sickness Benefits (+) 1/..	72	72
Net Change in deficit	+72	-691
Total Deficit Change, Unified Budget...	+1,457	-3,301

1/ Offset associated with DI waiting period proposal.

2/ Assumes rail employers contribute to State UI systems at maximum UI tax rates.

Thank you for this opportunity to present the Administration policy. I would be happy to answer any questions you might have.

Chairman PICKLE. Your entire statement is made a part of the record and I hope if you refer to your statement you might tell us what page you are making reference to so we can kind of follow you.

Mr. STOCKMAN. I will do that.

Mr. Chairman, let me make five or six points. The first one is we clearly need a legislative remedy for railroad retirement and unemployment and we need it signed into law sometime within the next 2 months. If we fail to do that we are going to end up with a very tragic situation that no one wants and that is an automatic 40-percent cut in industry pension benefits in October and perhaps as high as an 80-percent cut next October.

It seems to me if there is anything that we ought to have uppermost in our minds is: How can we get a legislative package through and accommodate it and compromise within that timeframe?

The second point I would make is that while there are no easy solutions to this very difficult problem, which really represents about 20 years of history, I think it is fair to say that we do have a drastic problem of underfunding, both in the retirement system and in the unemployment system, and that that serious underfunding problem can only be solved with real contributions and sacrifices, and credible long-term reforms of those features which have contributed to the impending insolvency.

And I would have to stress to the committee that I believe bookkeeping gimmicks may get us through a few months but they will not solve the problem. It would be inappropriate and unacceptable to lay off the entire cost of meeting both the unemployment and the retirement obligations of this system on the Federal Treasury at a time when we are already $200 billion in the red and not making much progress toward reducing that.

The third point I would make is that as in the case of the social security crisis we are going to have to have a complicated, delicately worked out compromise that accommodates all the competing points of view and interest in solving this problem. There is going to have to be an accommodation among the four major parties.

That means that for pensioners there is going to have to be some benefit reduction. There is just no way around it.

For employees there is going to have to be some contribution increase to the fund so that it will be solvent for the long term, at the time they choose to retire and draw on the system.

For management, they are simply going to have to pay more. You don't offer your work force a highly attractive pension benefit and then refuse to pay for it, even if it is inconvenient. That is where I think management is, and they are going to have to understand that to keep this pension and offer this benefit to the work force in that industry they are going to have to pay more.

And on the part of the Federal Government, I do not want to see a long-term bailout, a permanent subsidy or a huge unrepayable loan. I do think that we can all agree that there will have to be some kind of Federal bridge financing or bridge assistance because the problem is so acute right now in 1983 that the parties themselves can no longer be expected to solve it, at least for the short run, without interim assistance.

But I think that interim assistance from the Federal Treasury has to be truly interim and it has to be back-stopped with a set of changes and reforms that will guarantee solvency of both systems over the longer run even under relatively pessimistic economics, Mr. Chairman, as you appropriately insisted that we use in the social security case for the same reason.

The fourth point I would make to the committee is that I think we have to recognize that in the so-called rail labor-management package, the bill reported from the Commerce Committee, we have a good starting point. But that package falls substantially short of the mark in terms of solving this problem and avoiding laying it onto the Federal Treasury.

Now, I will acknowledge that that package over the next 6 years, 1983 to 1988, does require pensioners to give up $1.9 billion in benefits and that is a helpful contribution and that is an important start in terms of the reforms of early retirement, the COLA pass-through, and so forth.

And, likewise, the workers will have to contribute, as will management, with higher pension contributions.

But, unfortunately, the labor-management package asks that the Treasury—the taxpayers—kick in $5 billion, or 25 percent more than the 3 parties in the sector—rail labor and management, and pensioners—together are proposing to contribute.

And since this is essentially a private pension that by historical happenstance is in the Federal budget, I believe very strongly that the preponderant direct share of the solution must come from the three parties, and not their kind of $5 billion package of loans and grants from the Treasury provided for in the existing bill.

Second, this bill saddles the railroad unemployment insurance system with potentially over $2 billion in debts to the Treasury by 1988, causing the rail unemployment and sickness system's debt service to rise to such a level that it would actually exceed income, and thereby leaving the taxpayers with a note that can never be repaid under the existing rail SI and UI arrangement and, indeed, would take a wopping, massive tax increase—five or sixfold—ever to repay it.

And that has to be dealt with in a better way through a longer term structural reform that I will mention in a moment.

So, Mr. Chairman, for these three reasons I have suggested that we begin with the good elements of the labor-management package, that $4 billion worth of contributions and pension reductions that I mentioned, and that we add to it two principal changes.

The first would be to reduce the Treasury's share of the entire 7-year package from about 56 percent in the current bill reported from the Commerce Committee to around one-quarter or 25 percent, the same mark which was obtained in the social security compromise in which we had over 75 percent coming from workers and retirees and members of the system and under 25 percent coming from the Treasury. And, that the reduction in the Treasury share be replaced with proportionate and equitable increases in contributions by employees, management, and pensioners.

I think three steps could get us there very easily. No. 1 would be to conform the tier II wage base to social security, as it was prior to 1979. If you will note on page 5 of my testimony, Mr. Chairman, I have indicated that failure to conform the wage base over time will result in an increasing spread between the tier II railroad wage base and the social security base such that by 1988 it would be a $12,000 gap costing the system about $220 million a year in revenue at existing rates.

If we were to accept the principle that the wage base should be conformed to social security, immediately as we have proposed or on a stepped-in basis as the committee might choose, we could raise up to $2.2 billion over the 7 years and thereby contribute immensely to restoring solvency.

The other recommendation that we have made in this area is that the sacrifice to be made by labor and management should start on July 1, 1983; just as the sacrifice to be made by pensioners under the rail labor-management plan begins when the reforms take effect in July of 1983—the early retirement, the COLA delay, and so forth.

If we were to impose the first 1-percent increase in the contribution for employees and management equally this July 1, we would raise $1.2 billion more over the next 6 years and further contribute to the solvency objective.

The other recommendation in this area is that we tie the tier II COLA to some kind of solvency measure, just as we ultimately did in social security with the automatic stabilizer. And we have recommended that the tier II COLA not be paid until the retirement fund has achieved a stated level of solvency.

We have a ratio of 125 percent of prior year outgo but obviously that is merely a suggestion. It is something the committee could work with in order to get a final answer. But I think the concept that the COLA ought to be payable only if the fund is solvent is essential to a package, one we recognized in social security and one that would be appropriate here. We would like to pay everybody 100 percent of their COLA but, if the retirement funds are insolvent, if the money isn't there to do it, then we have to find some way to delay it until solvency is reachieved.

Now, the second step that I would recommend to enhance the labor-management package would be structural reform of the railroad unemployment insurance system through a merger on a phased basis with the regular Federal/State UI system. And if you look on page 12 and 13 of my testimony I think that you can see very clearly the reasons why this is the only kind of solution that will make sense over the longer run.

On page 12 in table 6, we have provided some information as to what the projected debt level—that is the first line or second line of the table—would be under the proposed package by rail labor and management. The obvious point is that the debt level becomes so enormous to pay current benefits that the debt service on that debt would overwhelm income and you would never pay back the debt. You would have no funds available to pay the benefits to unemployed rail workers either. And so we are suggesting that although there are a series of technical complexities and difficulties with merging a system that has been freestanding for a long period of time into the Federal/State system, there are no insufferable barriers to doing it, and with a little hard work and meeting of the minds we believe a multiyear plan to achieve that merger could be agreed to.

Now, I would suggest in closing here that there is something that would be attractive to all parties to the process in a phased merger if it were carefully worked out.

For the States as we have proposed it they would achieve cash flow before they would be required to pay out benefits. We have suggested an 18-month gap but that could be made longer. That would come precisely at the time when the recovery is just beginning and the States are desperate for cash.

For employees we have pointed out that because of the chronic insolvency of the SI and UI system, they have had no increase in the weekly benefit since 1976, and as a result, almost every State pays substantially higher benefits on a weekly basis right now than rail UI.

So for the longer run there would be more adequate protection for unemployed rail workers with a merger solution.

We also have pointed out that from the point of view of the industry that will have to bear the burden in terms of the cost of unemployment insurance, by merging over the long run the costs of rail UI would be spread across the entire economy and an industry that has a shrinking employment basis is going to be better off with the costs spread than concentrated, as they are right now.

And finally, Mr. Chairman, under those conditions we felt that a closed-end loan to rail UI to make benefit payments during the transition period would be justified—if we had a way out of the tunnel at the end where a completed merger would occur and the system would become solvent for the indefinite future.

Chairman PICKLE. Mr. Stockman, I have to ask you to hold up on your further statement. We have got another vote on and we only have a few minutes to go vote. I don't know whether this is the same vote we had a minute ago. This one is to vacate the proceedings. That is a little new. I understand we vacated. We moved faster than we thought.

Mr. STOCKMAN. Mr. Chairman, I just vacated the end of my statement.

Chairman PICKLE. We will be back in about 10 minutes. There is an agriculture bill and I don't know what the problem is but we had better go look into that a minute and come right back. Ten minutes.

[Brief recess.]

Chairman PICKLE. We will ask the subcommittee to come to order again.

Mr. Stockman, had you finished or nearly finished before we vacated?

Mr. STOCKMAN. Yes. I finished.

Chairman PICKLE. Do you have any additional statements or comments to make at this point?

Mr. STOCKMAN. Well, no, just to summarize again. I think the labor rail management package is a good starting point. We are going to have to do two things in order to get that ratio of Federal to private sector funding down near the social security mark, and that is to increase the contributions by management and labor to solve the SI and UI problem and put some kind of automatic restraint in the COLA.

If we can do those three things and add them to the existing package then I believe we will have a good bill, one that will solve the problem for the long run and insure that you are not back here in 2 years taking up this issue again.

Chairman PICKLE. Before we proceed with individual questions let me ask you a general question. I asked this question this morning of management and labor and got a response that basically hinged on the question that they hoped everything would be all right. You stated in general terms to us that H.R. 1646 was a good bill, a good starting point and a good beginning point for us but you haven't said what would be your recommendation to the administration if this committee were to endorse the bill as is, 1646?

Would that be acceptable to you or to the administration? What would be your recommendation to the administration if we pass the bill 1646 as it is now?

Mr. STOCKMAN. Well, Mr. Chairman, if you passed it as is with all of the features I mentioned, all of the open-ended loans and the big Treasury transfers, I think it would be very unacceptable. While others in the administration may have different views, I would recommend a veto.

Chairman PICKLE. Your voice got a little bit lower at the last part.

You would recommend a veto?

Mr. STOCKMAN. That is correct.

Chairman PICKLE. Unless we had some changes somewhere along the lines that you recommended?

Mr. STOCKMAN. Yes.

Chairman PICKLE. This issue that would keep you from recommending it—can they be changed or corrected or modified in a manner that could be acceptable to you?

Mr. STOCKMAN. Well, I think so, and I look forward to working with you and other members of the committee to insure that that is done. I don't think we want a confrontation that would burn up 2 months and result in an unacceptable package. I think we want to recognize that there are 1 million people who depend on this system and fix it in a way that isn't simply a raid on the Treasury, and I am willing to work with all the parties, especially the members of this committee, to get this good package fixed so that it is acceptable.

Chairman PICKLE. Well, now I have your statement about what you want to do to make some basic changes. Change the percentage from 50 to 60 percent which the Treasury is paying now to where it would be around 25 percent and let the others pay the 75.

Now, this morning we had testimony from GAO recommending that we might have a separate social security equivalent account and we didn't get much of an approval or agreement to that by management or labor but GAO had recommended it would have a separate social security account into which tier I income would be placed and out of which Tier I benefits would be paid.

How would you feel about separate social security accounts?

Mr. STOCKMAN. Well, Mr. Chairman, I don't have any decided view on that. I think it is more of a technical accounting change than it is anything more. We now have two programs. There is a definite method of calculating the tier I social security equivalent benefit. The whole interchange between social security and railroad retirement is based on precise calculations in that area. Tier II is separate: it is an industry pension. I think that if you reflect it in a separate account that would be helpful, but I don't think it would do much more to clarify the accounting.

Chairman PICKLE. How would you feel about raising the tier I base to conform with social security ?

Mr. STOCKMAN. That is what we have recommended we do. That is where our problem is, Mr. Chairman. It is the insolvency of the tier II fund. That is where the insolvency occurs. Tier I would be taken care of. The interchange pays that. That is the social security equivalent. What we need to do is raise some money to pay the tier II private pension.

Chairman PICKLE. Let me yield to Chairman Ford because I have not gotten into the unemployment field. Ask any questions you would like.

Mr. FORD. Thank you very much, Mr. Chairman.

Mr. Stockman, you talked about the merger and the 18-month gap. If the rail UI system was merged into the States would there be a dual burden on the rail UI plan? Will they still have to pay into the rail unemployment plan?

Mr. STOCKMAN. Yes, they would, because we have recommended that that be maintained for sometime into the future to pay, first, sickness benefits—because they would not be picked up in the merger—and second, the huge debt that they now owe the railroad retirement fund under my recommendation would be taken over by the Treasury, but over time the income from the current tax would be used to pay back that debt. And then as the debt is paid off and the sickness benefits were low, then the tax could be reduced over time.

Mr. FORD. The rail UI system has been in existence for some 45 years. It is difficult, to try to make a case in trying to merge it or dismantle it when the rail UI system has not been faced with any real, real problems over a long period of time. I think we can both agree to that knowing that they are faced with a financial problem now. Can we really justify after 45 years of existence with the rail UI system that we would now come to dismantle it with the merger in the States and the employees into the State system as well as paying into their own system?

Mr. STOCKMAN. Well, Mr. Chairman, I think it is a good question, but I call your attention to my testimony on page 13. What you will see there is that things have changed rather substantially over time. If you look at the top of the chart, rail employment in 1959 was nearly a million. By 1982, it was 441,000. In 1983, with the recession still affecting the industry, it is 385,000. There is a tremendous drop in the employment base on which the funds to finance SI and UI are levied. Then if you look at the second column you can see what has happened to the SI and UI wage base. The wage base has been $400 a month since 1959. Well, there has been a lot of inflation since 1959. As a result, the wage base on which the SI and UI tax is levied is defined in constant dollars declined from $400 in 1959 to $121 a month, under one-third its original value.

Now, the problem is the system did not have acute financial difficulties prior to the mid-1970's, but it wasn't building up any reserves. It wasn't taking steps to adjust to the fact that the employment force was shrinking, and that during any recession the ratio of unemployed workers to employed workers would be much lower and, therefore, the financial crisis would come hard and fast and acutely—as it predictably has.

As a result of not building up reserves they are now $500 million in debt. For an industry with less than 400,000 employees, for a fund that will generate only $120 and $130 million a year in revenue to be that deep in debt and heading toward $1 billion is to be heading into a permanent financial downward spiral that can't be reversed.

So, what I am saying, Mr. Chairman, is that it may be true what they say about 30 years ago, but given these facts and what has occurred in the last 3 years we can't get out of this without some other kind of solution.

Mr. FORD. Mr. Stockman, this current need to borrow, talking about the rail UI system, you know it is not that much different from the States coming to the trust fund now borrowing to meet their obligations as it relates to the unemployment compensation for the States.

Mr. STOCKMAN. Well, Mr. Chairman, it is different in two regards. One, in the Commerce Committee bill, the Florio bill, they borrow but there is no penalty if you don't pay back.

Mr. FORD. We are going to get to that part in a minute.

Mr. STOCKMAN. Well, I think that is a fairly good inducement to encourage people to be irresponsible about their debts. There is an unsecured loan and it would be very difficult to pay back.

Mr. FORD. Well, why don't we keep it separate and make that requirement for the repayment provision in it for the rail UI system.

Mr. STOCKMAN. Well, Mr. Chairman, let me make a second point. The reason that the Federal Government can make loans to the States is that the national economy is expanding over time and most State economies are expanding. So, if we build up debt at the peak of a recession, as we are now, we can look forward to a couple of years of recovery and State income from their UI taxes rising enormously, and then they are going to be required to take other steps to further increase their revenues and pay back their debt. You don't have this situation here. It is not likely at all that there will be a major recovery of employment in the rail industry.

So, unlike the Federal/State UI system with the natural recovery of the system following a recession, here you have no possibility for repayment.

Mr. FORD. But then we are going to shift that responsibility to other employers as well.

Mr. STOCKMAN. Well, Mr. Chairman, that is basically what we do throughout the entire Federal/State UI system. Shrinking industries put more cost on the system than they contribute. Expanding industries put more revenue into the system than they take out. We spread the costs because we don't want to concentrate the entire burden on every firm, every individual employer or industry.

And so what you say is true, but it is completely consistent with the essential nature of the Federal/State system that we have today.

Now, it is experience rated, but not completely, and the same factors would be operative here.

Mr. FORD. You know, Mr. Stockman, there are a lot of States borrowing now from the trust fund and we are going to see more of that in the coming months. I certainly would hate to shift the responsibility and it is not that I have made up my mind as it relates to this particular issue.

I certainly would like to be clear on it but I am not sure that we ought to forbid them from borrowing and if we would allow them to borrow we could maintain and preserve separate systems and come back with that provision and require them to repay those loans from the trust fund similar to the legislation and the law that require the States to make those repayments back to the trust fund.

I am just concerned as to whether or not we ought to preserve the separate systems or come back now and try to merge and leave that 18-month gap like you are proposing to the committees at this time.

Mr. STOCKMAN. Well, Mr. Chairman, I think you are raising good questions. Whenever someone proposes a major reshuffling or major restructuring of things you ought to be cautious because you can get into more trouble than you sometimes anticipate. But I would say in this case your only alternative is to put such a big tax on the industry if you are going to really pay off that debt and soundly fund the rail SI and UI system, a five fold or sixfold-increase, that that in addition to these additional measures to save retirement, on top of the already large burden that they have for financing their employee benefit system, you are going to end up doing a fairly severe damage to the industry.

And so, in the long run, it seems to me that if there is an approriate rationale and appropriate phasing time that we might want to spread it.

Mr. FORD. We have seen legislation with this and my State of Tennessee certainly would have severe problems in shifting the responsibility or additional burden over to employers of that State right now.

It might be that you ought to overhaul this total picture as it relates to the rail unemployment insurance system and we might be willing to do that but I just want to make sure that we are headed in the right direction.

Mr. STOCKMAN. Mr. Chairman, I might also say that what I have proposed would be a net benefit to the States and most individual States through 1988.

Since the industry will be paying taxes longer during that 6-year period than the States would be obligated to pick up benefits, the States as a whole would come out ahead.

Most individual States would, and for the near term—1984 to 1986—States would come out ahead. So the burden you are talking about is well down the road and the gain is right here and now in the next several years.

Mr. **Ford**. But we would agree, though, that the railroad industry will not be able to fully finance this total picture regardless of what we do; is that correct?

Mr. **Stockman**. I indicated that in my testimony.

Mr. **Ford**. Then I don't know why we should shift that liability or that responsibility on other employees. That has been my major concern, Mr. Stockman, and I guess when we move into a markup session it is an area in which I would sort of hope we could continue to have dialog with your good offices there and hopefully we can come to some resolution in marking up legislation and look at the clear picture to do what is best for the Government as well as the railroad system.

Thank you, Mr. Chairman.

Chairman **Pickle**. Mr. Frenzel?

Mr. **Frenzel**. Thank you, Mr. Chairman. Thank you, Mr. Stockman.

This morning there were some questions raised as to whether the industry was likely to be able to pay off what was estimated to be borrowings of $1.8 billion through 1988, for its unemployment program.

In your opinion is there any way the industry is going to be able to do that under this bill and under their agreement?

Mr. **Stockman**. I think the thrust of what I have been saying is no. That $1.8 billion is based on the so-called "A" assumptions of the Railroad Retirement Board, and those are relatively optimistic assumptions by their standards and they imply that industry employment stabilizes slightly below where it is now, there is no further recession and no additional shrinkage in the labor force.

I think on that basis you can fairly readily calculate what the costs are going to be with the system, what loans are going to be necessary to pay benefits, and what the debt burden is going to be. We provide that on page 13, and if you accept those assumptions you are going to end up with that debt, and you are going to end up, as we have previously indicated, I guess on page 12, with annual debt service that exceeds the income that would be generated from current taxes.

So you are in a situation where you either have a structural reform like we have proposed or a massive increase in taxes. Those are your two choices.

Mr. **Frenzel**. Well, that is the thing that bothers me. Suppose I am a competitor running a truck line or barge service and in my State I will be paying probably twice as much unemployment compensation per person as the railroads. To me that does not seem like an equitable situation and what we hope will be a relatively just society.

Is it not reasonable that that unemployment program should be modified to increase contributions or reduce benefits although the benefits have been held down there is an unusual way of paying.

One wonders they are certainly low on a daily basis but they may be quite high on an annual basis. Should this subcommittee consider reducing those benefits or raising unemployment contribuitons? Why should this group be sheltered from what the Congress and the administration is trying to do to all other contributors to unemployment compensation programs?

Mr. STOCKMAN. Mr. Frenzel, I think in what we have proposed they are going to face an increase in the tax rate. Every State is going to have a higher wage base to pay on $7,200, I think. And the rates are higher in almost every State, so by merging into the Federal/State system the railroad sector is going to face the same kind of relative unemployment cost financing burden as the barge industry or any other competitors.

I think you put it on a more even footing and there would be experience rating and, frankly, I think the industry would be given a high rate by the States given the degree of employment, unemployment and volatility of unemployment

Mr. FRENZEL. I suspect in most States it would be a maximum rate taxpayer. How soon could the industry be consolidated?

Mr. STOCKMAN. Well, I don't think that is something you could do right away. I think we are looking at 2, 3, 4 years in order to bring all of these things into place. I think the tax rate ought to start earlier. The benefit payoffs begin later in order not to hit the States too hard, but all of these things would have to be phased because there are a lot of features of the existing Federal rail UI system that are different than the State systems, and you would need a period for the transition to occur, and the accommodations and so forth to be made. But in a few years, the job should be possible to do in an orderly way.

Mr. FRENZEL. This morning, some of our witnesses complained about your 56-percent figure. It seems to me on the other hand that it is probably too low. Don't you have a half a billion in there that is a tax figure that would normally go into general revenue but in their case it is being diverted into their pension account?

Mr. STOCKMAN. Yes. The taxation appeared to——

Mr. FRENZEL. Really, I think the figure should be over 60 percent if you honestly evaluate it with the rest of the world.

Mr. STOCKMAN. I have been trying to be reasonable about this. If I wanted to be a very strict accountant about this I could say that a part of the tax package is only contingent. It is not legislated into law. It is put on a very uncertain and complicated trigger, and if we only counted what was really in the package by way of early retirement change, and COLA passthrough and the part of the tax increase that is automatic, it would even be less than the revised figure that you just mentioned.

Mr. FRENZEL. Thank you for your testimony.

Chairman PICKLE. Mr. Matsui, do you have any questions?

Mr. MATSUI. Just one, Mr. Chairman.

I would like to follow up on Mr. Ford's comments on unemployment insurance. It appears to me that with the October 1 deadline we obviously have to have any extension legislation passed before October 1. If we decided to put the unemployment benefit problem onto the States and they, in turn, want to put it onto all employees, can this be achieved without the support of business? Have groups such as the Business Roundtable, the U.S. Chamber, or the National Association of Manufacturers, endorsed your proposal? Have you discussed it with them?

Mr. STOCKMAN. Well, I don't know what their attitude on that would be. This is a fairly, at least from the point of view of a lot of these trade associations, limited and obscure issue. It is not something that most of them are interested in. I think you are right. We would have to find some way to reduce the outside opposition to it. I am not sure where they stand now.

Mr. MATSUI. It is my understanding that the U.S. Chamber of Commerce has some problems with your suggestion of having the unemployment benefit burden shifted to the States. While your proposal may have some merit to it in terms of the economy and who should bear burden, the time constraints and the opposition may not make it realistic. That is the question I have.

We have to move quickly and do something.

Mr. STOCKMAN. Well, I recognize that. I also point out that we were making very little progress on social security until late December and then all of a sudden people got serious about it. They rolled up their sleeves. We worked hard. It was a very complicated problem. A very complicated set of political positions and interests and everybody was dug in, but we passed that entire trillion dollar social security package in the period more or less of 2½ months.

It seems to me that if we can solve a problem that big in which the politics and the complications are even greater in that period of time, it seems to me we can do the same here. There is always a reason to delay. There is always a reason to study a while longer.

Those who are being asked to change their ways or when we are attempting to change the status quo, will always find some excuse as to why things should go on the way they are.

But in this case it isn't viable, and I just have to tell the committee that if you don't want to go the merger route with an ample phase-in period then you are going to have to weigh the full tax burden on this industry to finance this half billion dollar debt they already have and the benefits that they are going to be paying out this year, next year and the year after.

If you are willing to do that—and I am not talking about some halfway measure, I am talking about a five- or six-fold increase in the taxes that will have all the railroads screaming.

If you are willing to do that, fine, do that. But I want a solution that is not based on an open ended loan from the Treasury that will never be paid back, and every time the due date comes along there will be a quicky little bill designed to relieve the obligation to pay back that debt.

Mr. MATSUI. Was this recent proposal that you have set forth today presented to the Commerce Committee prior to their markup?

Mr. STOCKMAN. Yes, but they marked-up the day after I testified, or the same day, so they only saw it in passing.

Mr. FORD. Will my colleague yield?

Mr. Stockman, your proposal would increase the railroad industry's tax in Pennsylvania by over 200 percent. You go from a maximum of $384 per employee per year to $846 per employee, per year. Can the industry afford that and if they are going to increase their taxes like that wouldn't they be better off in doubling their own taxes and making their own rail unemployment system solvent?

Mr. STOCKMAN. Well, as I said, there is nothing wrong in principle with full financing of the existing system with an adequate tax rate. But as I looked at the tax rate that would be necessary to finance the existing rail UI system, I concluded that a phased merger with the Federal/State system is more reasonable in terms of the economic burden on the industry.

But what I am afraid we are going to do is you are going to say my proposal is too complicated and has too many uncertainties in it and so forth and, on the other hand, you are not going to put the full tax charge on the industry to pay the debt that they now have plus the benefits that are certain to be paid out in the next couple of years.

And, Uncle Sam, the Treasury, is going to end up getting stuck with bad debts. And I want to tell you I am not going to recommend approval of a bill that is based on bad debts issued from the Treasury in order to pay the cost of unemployment or retirement for this system.

If you find some way to assure me that you are not issuing bad loans that can't be repaid, but that you have got a real system in place to finance this, and that it will be solvent, that's fine.

Mr. **Ford**. I compliment you on that. No problem with that. But we are not going to send legislation out of this committee to shift that great responsibility to other industries by asking us to pass legislation within 2 weeks to make radical changes in the rail system and the industry itself.

We are not going to do that, Mr. Stockman.

Mr. **Matsui**. You say no money should come from the Federal Treasury and that is very attractive because we have a big deficit about which we are all concerned. If you put the burden on the State, however, and the State ends up taxing the employers, the money will be coming from somewhere anyway. Is that correct?

Does your proposal affect the economy any differently than taking money directly out of the Federal Treasury? Will you not slow down productivity in private industry by increasing their UI tax overall?

In California I know this could well happen if we have a massive tax increase in order to pick up this trust fund deficit.

We are talking macroeconomics here. I am concerned about the economy as well as you but what is the difference?

Mr. **Stockman**. I am talking about how we climb down off this $200 billion deficit we already have built in to fund the general fund programs that the Federal Government has.

Mr. **Matsui**. But I am talking about this particular issue. We can take either $5 billion out of the Federal Treasury or $5 billion out of the employers.

Mr. **Stockman**. But this is an example of where this is solved in current laws. You cut rail industry pensions 40 percent. That takes care of the problem.

Now, if you conclude that that is unfair or unjust and you want to preserve those benefits then you had better operate on the pay-as-you-go principle. Raise the taxes at the same time that you are restoring those benefits and that is what this legislation is about. I am not going to recommend any piece of legislation that preserves the benefits, increases the costs above current law, and doesn't finance it dollar-for-dollar with some real money coming from either pensioners or workers or the industry. That is what I am saying.

Mr. **Ford**. Are you advocating new tax increases to wipe out the $200 billion deficit then?

Mr. **Stockman**. No, I am trying to solve this thing one part at a time, and here is a manageable trust fund and a set of issues that we can deal with on a pay-as-you-go basis.

Chairman **Pickle**. Well, with that happy note we will yield now to Mr. Gradison.

Mr. **Gradison**. Thank you, Mr. Chairman.

Mr. Stockman, I have trouble with the analogy of social security that you used as the basis for your recommendation and your rationale for a 27-percent contribution from the general fund. It is true we did that to social security but at least that was neutral among industries. But here we are talking as Mr. Frenzel has already said, about an industry which, under current law, is competing more and more with other industries and I for the life of me don't understand what we say when the Teamster pension fund, which is in bad shape comes in and says we are having trouble and we need some loans and we are not sure how we are going to pay them back just like you have done for the railroads for years, and you continue to do it for the railroads in order to stave off a cut in pensions in October 1983.

We want it too. It seems to me that the answer is that the funds have to come from the industry, this industry. It is their employees. It should be internalized, not externalized to the States. I agree with the gentleman on this point. I don't think it should be spread around among the States and I certainly don't think it ought to be spread to the general taxpayers, many of whom have pensions of their own other than social security and yet are being asked here to help us support pension plans for one industry.

I have done some rough figures on this. I cannot vouch for their accuracy because I haven't had time to work them out. But if you accept the figure that you have used of a shortfall that is a Federal subsidy over the 6-year period 1983 to 1988 of about $5 billion and you put in to effect an across-the-board new Federal excise tax on rail movements, then it would come to about 3 percent. A little less I think because I don't have any pensions in 1981 of figures which are $28 billion for revenue.

It seems to me that is not an unreasonable choice. It would provide a more level playing field of the railroads versus their competitors in terms of funding these amounts.

It would assure the payment of pensions. It would avoid dumping on the States and the general taxpayer and it would provide the basis for making advances.

There is no question we would have to put some money up front to make this happen but at least it would provide some assurance that that money was going to be paid back and that percentage could be adjusted if it is too high or too low depending on the actual experience.

I am not asking you whether you endorse that because you have an alternative but is that something we all at least should consider?

Mr. **Stockman**. Well, Mr. Gradison, I think there are three choices. The first is an unsecured loan. You make the loan with no provision to repay it. That is not acceptable. That is what is in the current package and I hope that the committee will avoid that completely.

The second alternative is to provide for bridge financing to UI secured either by a long-term merger or an increase in the contributions, increasing the rail UI and SI tax base and rate sufficient to rapidly pay off the existing debt and to fully cover prospective costs as they emerge over the remainder of this year, next year and the year after. You have got to prevent rail UI and SI from borrowing from the retirement fund. That is part of the drain that is causing the pensions to be jeopardized.

So either of those two routes are fine with me but I am trying to stress very strongly that the first route will not wash, cannot be done, and we can't tolerate just an open ended loan that cannot be repaid.

Mr. **Gradison**. Well, I have no disagreement with that. I think that we get in a problem by focusing on the July 1 date rather than the October 1 date. I can appreciate if we don't act by July 1 the payments will be changed. But it seems to me that emphasizing the July 1 date plays in the hands of those who say, and quite properly, there isn't time to work out long-term solutions.

But if we said October 1 is the date we are working against I think that does give time to think through a gradual transition toward a long-term merging of these systems which could be faced so as to minimize the risk of adding an additional burden on other employers during this critical period in the course of the economy.

I appreciate why you have emphasized the early date but I think we would be better off not to do so if we want to come up with a long-term solution.

Chairman **Pickle**. Mr. Stockman, what about the October date?

Mr. **Stockman**. Well, frankly, Mr. Chairman, you would ideally like to see the legislation by June 15 so that the tier II COLA delay for 6 months could be implemented, and then everybody would be on the January 1 date, tier I, tier II, and social security.

But I am saying that if the price for doing that is an unsatisfactory overall package, I would prefer to look at the latter date as our target. We can't go up to the wire, obviously, but I would just as soon miss the July 1 date and miss the COLA delay, pick it up for next year, and act on unemployment and retirement before October 1 in order to give more time to work out a solid package.

That is the only part of this whole package that turns on July 1, the tier II COLA in July. If we miss that, we catch it next year, and it is not that much money.

Mr. **Gradison**. I am glad you made that statement. It is my understanding that the COLA amounted in total dollars to about $12 million, and I think it would be a serious mistake by letting the tail wag the dog.

If we let that $12 million cost on July 1 stand in the way of a $5 or $10 billion solution over a 6-year period, it does not make a whole lot of sense to me.

Mr. **Frenzel**. Will the gentleman yield?

Mr. **Gradison**. Of course.

Mr. **Frenzel**. Is there anything that would prevent us from sending up a COLA deferral bill all by itself, giving us a chance to work on this?

Mr. **Gradison**. No.

Mr. **Frenzel**. Can you gentlemen think of any legislative or parliamentary impediment to that?

Mr. **Gradison**. It is certainly worth considering. It would certainly put the test to the committee as to whether they want to work toward a long-term solution or whether the committee wants to follow the recommendations of the Commerce Committee and the pattern of past Congresses over many years of walking up to the crisis and putting a little more money into it, and not doing anything to forestall it.

I think the numbers now are getting pretty serious. We are talking about $5 billion over a 5-year period of general revenue. And, to conclude, Mr. Chairman, if that does not unbalance the playing field among the competitors here, I don't know what it is going to take to do it.

Thank you, Mr. Chairman.

Chairman **Pickle**. Mr. Pease, do you have any questions?

Mr. **Pease**. Yes. Thank you, Mr. Chairman.

I would like to ask about the employment assumptions. On page 13 of your testimony, even under the optimistic assumptions, employment never again goes above what it is this year.

If the employment was over 500,000 2 years ago and dropped down below 400,000 because of the recession, do we assume the recession is not going to end or do we assume that automation and that sort of thing will take effect so quickly that there will never be a recovery?

Mr. **Stockman**. Well, as I indicated, Mr. Pease, these are the assumptions used by the Railroad Retirement Board in order to make its actuarial projections. It actually has five economic scenarios from A to E, I believe it is.

We have used scenario A, which forecasts the highest level of employment in the industry. I don't think it is unreasonable to expect those paths, if you look at the numbers above it.

If you look at the long-term trend of history here, there has been a steady, major, secular decline in the employment level in the industry, partly because of loss of traffic elsewhere, partly because of increased productivity in the rail sector itself.

Now, we can argue about whether it is 400 or 350 or 375 or 410, but it is certainly not going to bounce back up in the 600,000, 800,000, 900,000 level where you would change dramatically the economics of either the retirement fund or the SI and UI funds.

Mr. **Pease**. Well, a decline in the decade from 1970 to 1979 was about 90,000 people, about 90,000. I guess I can't understand why it is logical that it would drop continuously below 388—why we could not hope for some improvement beyond 400,000, maybe 450.

Mr. **Stockman**. Well, I would urge that if the Retirement Board people have not testified yet, that you ask them why they project these levels of employment.

We like to use their numbers. They are closer to the industry and they have better data than anybody else.

We could redo some of these calculations with the higher projected employment level for 410, 450, something like that. I don't think it would appreciably change the results.

Mr. **Pease**. What is the reason for the lag in tier II wage base as between that and regular unemployment?

Mr. **Stockman**. Well, basically I believe it was the 1977 Social Security Amendments which provided a series of increases to the social security wage base, either advertently or inadvertently, and I don't remember the history, did not conform to the tier II wage base completely.

As a result, since 1979, they have increasingly diverged. It would be in keeping with the history of this to reconform the wage base and then put it on the same system as social security.

Mr. **Pease**. I was interested in your testimony where you said you would be strongly opposed to any tampering with section 22, "since this is tantamount to tampering with the social security benefit guarantee."

Of course, section 22 provides for the scaling back on a percentage basis of the tier II benefits and does not affect tier I benefits. Would it not be possible for this committee to "tamper" with section 22 so as somehow not to provide the reductions in tier II benefits without interfering with tier I benefits?

Why are those necessarily tied together?

Mr. **Stockman**. Well, ultimately, this is one fund, and if it should reach a state of insolvency so that no tier II benefits could be paid, then there would not be any money for tier I benefits either.

So it, in effect, protects tier I by causing a shrinkback in tier II before it is insolvent. But what we are trying to do is avoid that draconian shrinkback in this instance with a legislative remedy.

Mr. **Pease**. Well, we could eliminate section 22 and provide a new infusion of money into the trust fund so that if all goes reasonably well, both tier I and tier II benefits could be protected.

Could we not do that?

Mr. **Stockman**. I think so, but I do believe you need to end up with some kind of automatic stabilizer, whether it is section 22, which in this case is not workable, or a COLA mechanism like we have in the social security bill.

I would only urge that in your final product, there be some automatic stabilizer that protects solvency in basic benefits, if unexpected circumstances should threaten the funds with insolvency in the future.

Mr. **Pease**. You have been talking essentially about the UI system for the railroad employees, and the importance in your view of having that system funded entirely within the industry, not from Federal General Treasury funds, right?

Of course, with regular unemployment benefits for nonrailroad workers, the first 26 weeks are funded entirely by employer contributions in the various States. But the second 13 weeks are funded half by the Federal Government and the final 13 weeks, or really 26 weeks now, are funded entirely by the Federal Government.

Is there a parallel there which would suggest that the Federal Government may indeed be able to shoulder some of the burden for UI benefits for railroad employees?

Mr. **Stockman**. Well, I think if it were merged with the Federal-State system, then rail workers would automatically be eligible for EB under the existing 50/50 cost sharing or at the present time they would be eligible for FSB with 100-percent Federal financing.

But I don't think that you can draw some loose analogy which says that under the very carefully defined provisions of the Federal-State system, under high employment conditions the Federal Government contributes, therefore, we can contribute to a wholly different arrangement in railroad UI.

If you merge, yes. If you don't, an open-ended loan I don't think can be justified at all, because that basically is for the first 26 weeks. That is what most of the benefit cost is.

Mr. PEASE. Do you have any idea how much of the cost of the railroad UI system is for benefits paid beyond 26 weeks?

Mr. STOCKMAN. I can supply that to the committee, but the fact is, if you are not employed for more than 10 years, you are not eligible. And to get the full extended benefit, you have to be employed 15 years, so you would expect that a high proportion is for the first 26-week basic package. But I will supply that.

Mr. PEASE. Would you be willing to pay for the proportion that does go to people who have worked over 10 years, that cost, would you be willing to have that come from the General Treasury retrospective?

Mr. STOCKMAN. I don't think that really we should start with ad hoc tinkering. In other words, leave the system as it is, insolvent as it is, underfinanced as it is, and then find one or two parallels and say that justifies putting in some Federal money.

Let's find a way to make it financially solvent over the long run. There will be Federal money involved. I have indicated that in my testimony.

I am willing to support a bridge loan as long as I know the bridge leads somewhere besides midair, and that is what you have in the Commerce bill now.

Mr. PEASE. Thank you.

Chairman PICKLE. Mr. Hance, do you have any questions?

Mr. HANCE. Yes.

Mr. FORD. Mr. Hance, would you yield just 1 second, please?

Mr. HANCE. I yield.

Mr. FORD. Mr. Stockman, say there are those of us on the committee who want to preserve the system the way it is and if they did borrow from the Federal Government, would you strongly advocate a repayment provision within the legislation?

Mr. STOCKMAN. Absolutely. I think that was our conversation before.

Your alternative is a very steep tax to insure that the loan was repaid. But I just hope—and we talk about this and it sounds easy—that you have got the courage of your convictions, that when the railroad companies come in here screaming about what terrible things it is going to do to them, that you stand by your position and you lay on that tax and you put it to them.

You have to, if they want to have this unemployment system which is part of their compensation package. If you don't have the courage to do that, then the route that I have proposed, I think, is a reasonable one.

Mr. FORD. Well, in H.R. 1646, that provision is not included within the bill. I just wanted to make sure that your office would support that component of the bill that called for a repayment provision.

Thank you, Mr. Hance.

Mr. HANCE. Some of the witnesses this morning said that they felt like if the package was changed, that it would come unraveled and could not pass.

What happens if nothing passes, a 40-percent decrease in benefits?

Mr. STOCKMAN. In the tier II benefit, which is probably a 15-percent average decrease in the combined tier I and tier II benefit.

Mr. HANCE. So it would be a 15-percent decrease in the checks for those who are out there?

Mr. STOCKMAN. Yes.

Mr. HANCE. The other thing, this morning, looking at some of the figures presented, in about 1986, if this bill passed, employers would be paying the equivalent of 22.4 percent in payroll taxes, and employees about 11.4 percent.

It is pretty obvious railroads are not going to go much above that or they can't go much above that. In fact, I don't really see how the railroads can make a go of it at 22.4 percent. That is awfully high.

A question comes back on the benefit cuts. You suggested on the COLA's, I believe, capping up to 100?

Mr. STOCKMAN. Mr. Hance, I suggested that if the railroad retirement trust fund ratio were below 125 percent of last year's outgo, then the COLA would be deferred until it rose above that solvency ratio.

Now, right now the tier II COLA—that is what I am talking about—is only 32.5 percent of the inflation. So you are not talking about taking away a 100-percent COLA, as you might think about it for social security and elsewhere. They would still get the full COLA for tier I.

What we are suggesting here is for tier II, the private industry pension which the industry really ought to be obligated to fund, that COLA would be delayed until there was enough solvency in the retirement fund to assure the basic benefits plus COLA's could be paid in the future.

Mr. HANCE. One other thing, on the UI system, in your testimony on page 13, you point out that the amount that is subject to taxation has remained frozen at $400 since 1959. You have a very accurate table, No. 7, that points out the costs of this situation.

I think this is one thing we definitely have to look at and definitely have to change.

The other thing that you mentioned about UI was the possibility of shifting it to the States. I guess it is a question of, do we shift it to the States or do we shift it to all the taxpayers, and do the employers in the States pay for it or do all the taxpayers pay for it?

I don't know that I see that much difference. The key to me seems to be that if there is going to be any assistance, that there be some type of tax, some type of penalty, if it isn't paid back, and that would be pretty harsh.

Would you agree on that?

Mr. STOCKMAN. I think that is what I indicated to the chairman before.

Mr. HANCE. But if you did shift it to the States——

Mr. STOCKMAN. If you don't shift it to the States because you conclude for one reason or another it is not the appropriate thing to do, then your only choice is to have a large penalty rate immediately, automatically click into effect—no ifs, ands, or buts, no conditionalities or triggers—in order to reduce their debt at a rapid rate.

Mr. HANCE. But would the penalty be on the employers and the employees alike?

Mr. STOCKMAN. Well, the existing railroad unemployment system taxes only the employer, and I don't know that you would necessarily want to change that. Ultimately it comes out of the same pocket.

Mr. HANCE. It seems like you might need to look at changing that if you are going to get everybody to agree to try to hold it down.

Thank you.

Chairman PICKLE. Mr. Shannon.

Mr. SHANNON. No questions, Mr. Chairman. Thank you.

Chairman PICKLE. Well, Mr. Stockman, before you leave or before we open it up to other questions, let me ask you a question about something we had this morning.

We had testimony concerning the responsibilities for having paid out some $4 billion in windfall benefits that were paid out from 1954 to 1974, and the strong statement was by some of the witnesses—and they are with us this afternoon—they allege that the social security system and the Federal Government had forced the payment of these benefits.

That is, that both management and labor back in 1954 and 1974 had opposed the windfall benefits. They say because the Congress went ahead and did it, the Congress is at fault and the Congress owes them $4 billion.

I don't know if that is the correct way to state that, but generally, that was the allegation.

Do you have any comment to make on that?

Mr. STOCKMAN. Yes, I would make a comment.

I strongly disagree with that view of history. That is the sort of revisionist history of what happened over 30 years that rail labor and management would like to think happened. But what actually occurred during that period was a knowing contradiction on the part of those who were most concerned about this system and should have known better.

The contradiction was that for the purposes of the social security financial interchange, rail employees were treated like all other employees. That is, if they left their first job, the railroad job, and went out into the private sector, they did not start all over again in social security but the wages they have earned were added to the previous wage history and the interchange cost was calculated on a consolidated basis.

We do that with regular social security. Somebody has two jobs; we don't pay 90 percent of his average monthly wage for the first job and 90 percent for the second job. We add it together and we put him in the second and third tier of the social security benefit formula.

Now, in railroad retirement, on the one hand the interchange was calculated just like it is for regular social security. But the entitlement to railroad retirement was allowed to build up the other way. That is, you earned your social security equivalent benefit in the railroad industry. You went out and took another job in the private sector and you started over from scratch in social security again with a new wage history starting at the 90-percent replacement rate.

Now, for years this contradiction persisted. The interchange was paying railroad retirement as if it was treating everybody the same. The entitlement was treating them differently, and as long as railroad retirement was financially solvent, nobody cared. Offer them more benefits. Don't raise the issue with the social security system and the Social Security Subcommittee about whether or not you ought to be paying more than you would to anybody else who was not in the industry.

Finally, in 1974, the system got into very bad shape and they said, "Hey, we have been sleeping for 30 years with a contradiction that we more or less put into the law in the early 1950's. Now we want it to be solved in our favor by having the social security system pay that $4 billion."

Mr. Chairman, you said "nothing doing" back then and so did a lot of other people, and so, who ended up with the burden? The general taxpayer.

We now fund that windfall benefit out of general funds, out of appropriations. Then it turned out that, with the appropriation which was put into the law at that time, we shifted the burden to general funds. Mr. Chairman, $250 million a year for 25 years was wholly inadequate and the system was going to cost a half billion a year.

So in 1981, we made a deal with the sector and we said, "We will pay more in the future, about $1.8 billion more than was intended in 1974"—and by "we" I mean the general fund—"if you will recognize that the system set up in 1974 to pay the windfall benefit is not working and we should restructure it."

Now, the second crisis—the third crisis in the last decade—comes along and, lo and behold, they want to solve the problem again by reopening the windfall issue and trying to make another raid on the Treasury with it. And that is all it is. Anybody who reads the history fairly and objectively will recognize that. This $2 billion that they have in their package is nothing more than a disguised raid on the Treasury, justified in the name of a rather distorted view of history.

So I would hope the committee would ignore that and would try to solve the problem in a constructive and reasonable way that is based on real money and not some mischevious reading of history.

Chairman PICKLE. Well, there seems to be a difference of opinion here on this subject, and I am glad to get the other side of the picture. We will evaluate both testimonies.

I do want to ask you other questions for the purpose of trying to get to something more positive. You said earlier that you would consider separate social security accounts, though it might be more technical than anything else, but it would at least clearly define where the money is and what is going out and what is going into the fund.

You said that you would take the tier II wage base on an annual basis. You recommended that.

The question was raised this morning about the acceleration of deposits that is to be rescheduled on the part of management. Do you have a feeling on that? Should we accelerate that?

Mr. STOCKMAN. Mr. Chairman, I would have to look at that. We did it in social security with State and local sectors and so forth, and if it is justified, we probably ought to take a look at that proposal.

Chairman PICKLE. Well, we do that now for employers. They just pay every month, sometimes several times a month, and we accelerated the State and local. That did not make some of our States happy, but we have done it.

Now, the question is, should we allow them to keep the same schedule? Is there any reason in your mind why they should be separate and apart from all other employees?

Mr. STOCKMAN. No, there would not be any reason. And in many of my recommendations, I said, let's conform to social security.

Chairman PICKLE. But I would like your position on that just to know where you stand on that.

We had another question raised this morning with respect to a commuter rail tax that was located in the northeast area—I presume in New Jersey and Pennsylvania—and it only costs them $15 or $20 million a year. Neither management nor labor was for it, but it got in the bill.

My question is, are you familiar with that little commuter tax?

Mr. STOCKMAN. Well, Mr. Chairman, I am aware of the provision. I think it is a rather grossly unjustifiable thing to do when you have a system going bankrupt and people faced with 40-percent industry pension cuts—15 percent overall—you are going to give a little relief to a couple of commuter lines in one State.

Now that happened in the middle of the night, as I understand it, in the Commerce markup. I don't see how you can possibly justify doing that, and worsen the insolvency and increase the threat to the million pensioners.

Chairman PICKLE. Now, with regard to the tax rate put in effect, and one difference in the tax rate was such that if it was not needed by 1986, it would be triggered out. Now you want to keep it in.

Mr. STOCKMAN. Well, Mr. Chairman, I think what you ought to do is if you are going to have triggers based on a solvency rate, cushion them with sufficient magnitude to insure you don't have a crisis.

In principle, I don't oppose triggering this, but you ought to base it on a very carefully crafted solvency ratio so that until we reach that level of solvency, that it is safe, we have got a means in place to generate funding to preserve the benefits.

Chairman PICKLE. Do other committee members have other questions that you want to go back to?

Mr. MATSUI. I have just one question, Mr. Chairman.

Returning to the unemployment insurance issue, I wonder whether the railroads support transfer of the unemployment program to the States?

Do railroads have any problems with the States then increasing the benefit taxes of all the businesses and industries?

Mr. STOCKMAN. Well, I would answer that by saying that I am not sure what all the individual railroads or even the overall industry consensus view is, but my conversations have suggested that for the longer run, they see that as an attractive, reasonable idea. They have problems getting in.

Mr. MATSUI. I think you may be correct given that we have 2 million, plus 5 million out, and we can put a repayment schedule in place. Let's be realistic, however. It is not going to be paid, probably, given the state of the railroad industry at this particular time.

Who knows what will happen 2, 3, 4 years down the road, but I think our current projection is that it won't be paid. I think you have raised some very telling points.

Would you be interested—and again, the chairmen of both of the subcommittees would have to be involved—in coming up with a temporary fix to respond to the October deadline and then seeing if we could come up with a comprehensive solution in which there would be a combination of trust funds and structural changes that could be based upon something similar to the social security legislation?

I think you are right; I think it is a problem that if we go to an inadequate formula, the industry will be back in 4 or 5 years from now and we will be faced with the same problem.

Have you given the following some consideration: a temporary solution where benefits will not be cut but they will be limited at the current rate of increase; it would give us some time to work with you, labor, and the industry to see if we can come up with a fair final solution?

Mr. STOCKMAN. Well, yes; and the question was raised before, but I think enough time is 2 or 3 or 4 months.

This problem is not that complicated that if all of you were willing to take a——

Mr. MATSUI. Dave, I think you are right, but neither was social security except for the political aspect of it. I think it is the same with this situation.

Mr. STOCKMAN. Yes; but we got it done because 4 months down the road we were facing a disaster, namely 36 million people were going to be faced with a cutoff of their check.

Mr. MATSUI. But there was a 2-year study on it, though.

Mr. STOCKMAN. But we did not get very far until December.

Mr. MATSUI. Yes, the people recognized the problem. Perhaps some people still don't recognize the problem on railroad retirement.

You are going to have to educate the House, the Senate, and the general public. Let's face it. Most people are not focused on this issue except those few who are involved in it. I think what the Commerce Committee did is a clear indication of this. It seems to me that they really did not solve the problem.

Mr. STOCKMAN. Well, the Commerce Committee's bill—and let's be very clear about the history—originated by the middle of February when the chairman decided he saw a social security bill coming down the pike that was veto-proof and he asked the industry to put together a package in 3 days. And they broke their backs doing it day and night, and they came up with this package. That was not bad for a 3-day effort, given the political differences between rail labor and management.

But it seems to me if that much could be done in 3 days—and literally, this first $4 billion of the package was done in 3 days or maybe a little more than that—there is no reason why working together and consulting with parties and so forth, that over 3 months we can't take the first package and put it together.

Mr. MATSUI. The problem now is the negotiating position we are in. If the President vetos the bill, there will be an automatic cutback of 14 percent and 18 percent overall. That is a concern I have.

We are negotiating at a disadvantage with the administration, and that is why I am proposing the possibility of coming up with a temporary solution for October, as this would give us some time to work out a permanent recommendation.

Mr. STOCKMAN. I can't answer that question. I don't think the situation is that involved.

Mr. FORD. Well, we will admit that it is a critical issue.

Mr. Stockman, just for the record, on April 19 of this year, you testified before the Senate Labor Human Resources Committee on railroad retirement, and on page 23 of your testimony is the comparison of the unified budget on table 12, footnote 2, you said, "assumes that rail employers contribute to the State UI system at the new employer rate, which would increase the revenue by $400 million."

You testified here 2 weeks later on page 23, same chart—you changed it, though. You assume the rail employers contribute to the State UI system, that a maximum UI tax rate, which on the Senate side it was slightly over a 100-percent increase for the rail industry, here before this committee, it is a 200-percent increase.

We are going from $400 million to $763 million; 2 weeks later you have changed your mind about it.

I think that we would need the time in order to mark up some legislation and not move in a fashion that we would try to merge this system into the States until we have ample time to look at the legislation, Mr. Stockman.

Mr. STOCKMAN. Well, I admit that that number changed, but it was just a change of assumption. You had to assume.

Mr. FORD. You used the maximum UI tax rate.

Mr. STOCKMAN. That is probably what would be levied. I don't think that is a big change.

Mr. FORD. Slightly over 100 to 200 percent is not a big change?

Mr. STOCKMAN. Well, it is not a big change in terms of the assumption. You either have new employees or the maximum experience rating, and if you think about it hard, we came to the conclusion that maybe not immediately, but shortly thereafter, they would be paying the maximum rate given the volatility and the level of unemployment in the industry.

Mr. FORD. But that is our question, it is just at a 2-week period when you testified before the Senate and here before the House. We just don't want to move on some legislation that we would not have the time to mark up.

Mr. STOCKMAN. Well, I would say again, in 2 or 3 months, all of these things can be surfaced, clarified, and worked out.

Mr. Ford. Mr. Stockman, we would like to thank you for testifying before the committee.

There are other questions that we would have for the record. We would like to submit them to your office and hope that you would respond to the committee.

Mr. Stockman. Thank you.

[The following letters were subsequently received:]

Executive Office of the President,
Office of Management and Budget,
Washington, D.C.

Hon. J. J. Pickle,
Chairman, Social Security Subcommittee,
Committee on Ways and Means, Washington, D.C.

Dear Jake: This is in response to your request for our views on the funding necessary to assure the solvency of the rail industry pension system.

As with social security, the adequacy of any solvency package must be prudently assessed under at least moderately pessimistic economic assumptions, not just under more optimistic "best guess" assumptions. For railroad retirement, projections of rail employment are the critical assumptions. The Chief Actuary of the Railroad Retirement Board (RRB) has indicated that his employment path "A", in essence, represents his "best guess" about future rail employment. Employment path "C" approximates his "pessimistic" scenario. Accordingly, the adequacy of various rail industry pension solvency packages is evaluated primarily under employment path "C" and only secondarily using "A" employment levels. The pricing of the individual provisions is based on the RRB Chief Actuary's estimates. Adopting this approach will assure that the failure of the 1981 railroad retirement "fix"—caused by overly optimistic employment assumptions—is not repeated.

To assess more clearly the solvency of the rail industry pension portion of railroad retirement, the social security equivalent portion of railroad retirement is separated out from the rest of railroad retirement. This separation is assumed to be done in a manner which would have no adverse affect on the Social Security trust funds. It is consistent with the GAO recommendation and your statements at the hearing. As under current law, the windfall remains in a separate account.

As requested, our analysis focuses on rail industry pension solvency and assumes that the drastically underfunded railroad unemployment insurance system is restructured and placed on a sound basis. Under this approach, the railroad unemployment insurance borrowings are further assumed to be repaid in full to railroad retirement.

If nothing were done to change pension contributions or benefits—if rail pensions were not reduced as the current law Section 22 requires—the rail industry pension would have a negative balance of some $8.8 billion by the end of fiscal year 1988. In other words, the account would be "in the red" for approximately three times its annual outgo. Even under the optimistic "A" path, the fund's balance in 1988 would be minus $7.6 billion.

My testimony before your Committee contained a comprehensive solvency package for both railroad retirement and railroad unemployment. Starting with the sound elements of the labor/management proposals, the retirement part of the package adopted the principle of conforming to social security and began rail employers' and employees' contribution to rail pension solvency at the same time as retirees began theirs. Enacted in its entirety, this package would provide a modest 1988 reserve accumulation of $.6 billion, which had increased consistently from 6 percent of outgo in 1984 to 25 percent in 1988. Under the more optimistic "A" assumptions, the balance would be somewhat less than $2.2 billion, or 89 percent of outgo.

We understand that some provisions in the comprehensive solvency package are not in the jurisdiction of the Ways and Means Committee, such as the provision to tie rail industry pension COLAs to trust fund solvency—even though the provision parallels the approach you adopted in H.R. 1900. The savings from this provision, together with the revenue raised by the proposal to increase by 1 percent each the employer and employee pension contributions starting July 1, 1983 would equal the net amount of the so-called unreimbursed windfall costs sought by the parties. As GAO pointed out in its testimony, the parties claim in excess of the net windfall costs, seeking instead "gross" windfall costs, exclusive of the savings associated with the windfall offset discussed by GAO. Linking the industry pension COLA to solvency and the added 1 percent employer/employee pension contribution would provide greater savings by 1990 than would the gross windfall subsidy envisioned by H.R. 1646.

The rail industry pension balances, assuming the provisions of H.R. 1646 including the gross windfall subsidy but augmented by the proposal to conform the tier II wage base to Social Security, would produce a balance of $1.6 billion in 1988, or 62 percent of outgo. Under the optimistic path, the balance would be $3.0 billion, or 116 percent of outgo.

If H.R. 1646 were enacted as reported by the House Energy and Commerce Committee, the rail industry pension would have a 1988 balance of only $.2 billion, or 6 percent of outgo. However, this positive balance masks an ominous trend: rail pension outgo—benefit payments—will increasingly exceed contributions, by over $350 million in 1987 and $380 million in 1988. The result of this growing imbalance between pension contributions and pension payments is a steadily declining fund balance. By 1988, rail pension assets as a percent of outgo would be half of the 1986 level, and would continue to decline steadily.

The steady decline in solvency under H.R. 1646 results from the reliance on general fund loans and subsidies to provide 56 percent of the "savings" claimed for that package. This approach masks the major gap between pension payments and contributions, and assures that the rail pension fund will face a solvency crisis again in the near future.

Sincerely,

DAVID A. STOCKMAN.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., June 22, 1983.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security,
Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for the opportunity to testify before your committees on May 3, 1983, on railroad retirement and unemployment insurance. I think this hearing was a positive step toward developing sound, equitable, and enduring solutions to the problems facing these troubled systems.

You requested that I provide the Committee with the Administration's views on requiring railroad employers to deposit railroad retirement taxes on the same schedule as employers paying social security taxes.

Under current law, railroad employers deposit rail pension taxes within 15 days after the close of the month for the first two months of a quarter, and by the end of the month following the last month in a quarter. In a recent study, GAO (HRD 81-112) estimated that in fiscal year 1980, the railroad retirement account could have earned an additional $18.9 million in interest income if rail employers had been required to deposit as private employers contributing to social security.

GAO's recommendation is consistent with the principle of conforming railroad retirement to social security evident in rail labor and management's financing request. Although implementation of GAO's recommendation does not require legislation, the Administration would not object to conforming tax deposits for railroad employers as part of an acceptable rail pension financing package.

You also asked for an estimate of the proportion of unemployment insurance benefits paid to rail employees who had already drawn 26 weeks of unemployment. Unfortunately, the Railroad Retirement Board's (RRB) estimates of railroad unemployment compensation paid to beneficiaries who have already received over 26 weeks of benefits are not directly comparable to similar estimates under the regular State UI system.

Unlike State UI systems, rail UI beneficiaries with 15 years of service may, in some instances, continuously collect benefits for slightly more than two full years. (State systems allow no more than a maximum of 39 weeks of benefits without special Federal supplementation.) The RRB's records do not distinguish between first-time applicants and long-term beneficiaries at the start of a new benefit year. When the new RUI benefit year starts each July 1, anyone who is eligible for benefits regardless of whether they drew unemployment benefits in the prior year, is treated as if they were a new beneficiary. In addition, since the RRB's most recent data pertain to 1981, they do not reflect recent unemployment experience in the industry.

Thank you again for the opportunity to testify before your committee. I hope this information will be helpful to you as you consider alternative rail pension and rail unemployment financing proposals.

Sincerely,

David A. Stockman, *Director.*

Mr. Ford. With that, the two subcommittees will now stand adjourned.

[Whereupon, at 4:35 p.m., the hearing was adjourned.]

[The following was submitted for the record:]

North Canton, Ohio, *April 27, 1983.*

Subject: Railroad Retirement Pensions.

Hon. Dan Rostenkowski,
Chairman, Ways and Means Committee,
The Capitol, Washington D.C.

Dear Representative Rostenkowski: I retired in 1976 from the Conrail Railroad as a conductor and am now 71 years old and living at the above address with my wife Arlene whose occupation has been a housewife since we were married in 1951.

I am informed our pension will be cut from tier II benefits by October 1, 1983 unless additional funding is provided. My Congressman, The Honorable Ralph Regula, has kindly supplied me with a copy of H.R. 1646 and not being of a legal mind to understand the wording I have to depend on others to do so.

Please refer to clipping from my "Labor" paper of March 16, 1983 titled, "Its up to Congress Now". You will note that H.R. 1646 is a result of an agreement of both labor and management working under the auspices of Representative James Florio's Commerce and Transportation Committee. I now have a letter from Representative Regula indicating he favors this legislation and it has passed the Commerce and Transportation Committee with some few changes and is now in the Hands of Ways and Means Committee of which my information is that you are Chairman. I am also informed that hearings on this H.B. 1646 are to begin on May 3, 1983.

Please permit me to make a few remarks. Arlene and I are in favor of this legislation H.B. No. 1646 as this is our income to live on and I have earned it the hard way.

We pay more for our pension both into it—2 percent above Social Security by the employee and now it is eleven percent more by my employer. How long I do not know but this has been the case for years, on the Employees part at least. We should get more in benefits. I have heard talk and references how the Railroad Retirement Pension Funds have been raided by various entities over the years but cannot put my finger on any information on this until a book at our local library.

Please now refer to photo-copy of a few pages from "Congress and the Nation", Vol. IV 1973-1976. I must point out this is not law but it is published by Congressional Quarterly Inc. You will note P. 688 that the Railroad Retirement Act of 1937 was the first Private Pension system to be administered by the Federal Government.

You will also note that in 1951 Congress made sweeping changes in the system and began directly linking the private pension plan with Social Security by establishing an annual financial interchange between the two systems. Each year the Rail R. Pension plan was to transfer to Social Security as much money as Social Security would have collected in payroll taxes if the railroad workers had been covered by Social Security.

At the same time, the Social Security System would transfer to the railroad retirement system an amount equal to all the benefits that would have been paid to retired railroad workers, their spouses if such workers had been covered by Social Security since 1936. The net return over the years of this interchange (1974?) was $8.2 billion from Social Security to the railroad retirement system.

The amount should have been greater but Social Security reduced the amount it transferred by an amount equal to the Social Security benefits paid out to those railroad workers who had other jobs that qualified them for Social Security benefits already. According to a Senate and House Commerce Committees the Railroad Retirement system had lost more than $4 billion in Social Security reimbursements and stood to lose an additional $4.5 billion.

You will also note that the H.R. 7200 (P.L. 9369) increased the employers portion of the taxes from 10.6 of the wages to 15.35 percent.

You will also note on page 699 of exhibit 2 that in 1974 H.R. 15301 (P.L. 93-445) was passed over the Presidents veto and among other things established a two tier system of retiree benefits. Retiring in 1976 with over 30 years of service I qualify for this. Old railroaders tell of an all time high in the pension fund after World War No. 2 and how far larger sums were drained from the fund but being a laymen in these matters while working I gave little thought to the pension as I thought everything would turn out alright later but as outlined above they are not. The pension fund has been drained.

H.R. 1646 is outlined in exhibit 1, and has apparently passed to your Ways and Means Committee with certain changes as provided me by Congressman Regula. For Tier one the new regulations for Social Security benefits has been passed by Congress and while I may not agree its useless to try to change.

On Tier two benefits I have already paid my share of taxes over the years on my contributions. I am also of the opinion that my employer has paid taxes or was credited on his tax return for payment of his share. I am also entitled to get back more than I paid into this fund as this fund should have been used and in invested in interest paying securities at the prevailing market rate of interest. This should be similar to what would be paid into and old line insurance policy with a reputable Insurance Company due to pay me at retirement either in lump sum or monthly payments.

However as reported to your Ways and Means Committee over the years the SS Administration has abandoned the idea of a reserve but chose to establish a pay-as-you go policy and incidentally used the Railroad Retirement funds to shore up their short comings. Referring to exhibit three and then under cash flow provisions underscored in red and then the proposed change to allow the Railroad Trust Fund to borrow one third of the principal and interest attributable to underfunding of dual benefits. This is plain robbery of our retirement funds as the Social Security Administration should pay the estimated deducting of funds of some $4.5 billion plus interest since 1974 and also the estimated return with interest to our retirement fund of the estimated shortage of some $4 billion since 1951 when Social Security started to raid the fund.

In conclusion I earned my pension and as junior employee I had to chase my job all around over the senority district and could only hold a relatively good paying assignment the last twelve years of my employment on the Pennsylvania Penn-Central and Conrail. I feel Arlene and I are about to be short changed by the Federal Government by the improper administration of our private Railroad Retirement Pension fund.

I urge you and your Committee to give H.B. your immediate attention. These comments and exhibits are respectfully submitted. We are only two people but will be affected.

Very truly yours,

Chester L. Brooks.

Exhibits: As noted. [Exhibits have been retained in the subcommittee files.]

Chamber of Commerce of the
United States of America,
Washington, D.C., May 2, 1983.

Hon. J. J. Pickle,
Chairman, Subcommittee on Social Security, Committee on Ways and Means, Washington, D.C.

Dear Mr. Chairman: On behalf of the U.S. Chamber's more than 220,000 members, I respectfully urge you to (1) provide appropriate protections to the Unemployment Trust Fund if you authorize the railroad unemployment insurance (RRUI) program to borrow from it, and (2) defer consideration of a proposal to merge the federal railroad unemployment insurance (RRUI) program into the federal-state unemployment compensation (UC) system until there has been adequate opportunity for a thorough analysis of its impact.

RRUI is operated by the federal railroad retirement system. Financed from a flat tax on rail payroll, RRUI is running a deficit of $650 million (borrowed from the rail retirement program), projected to reach $2 billion by 1988.

The rail retirement system is also in financial trouble. Rail labor and management have reached an agreed solution for the retirement program, introduced as H.R. 1646/S. 1074. That measure does not address the imbalance of RRUI benefits and taxes, but would (1) transfer the RRUI debt to the UC loan account in the Unemployment Trust Fund, and (2) authorize the RRUI program to borrow from the UC loan account on the same basis as a state. Advances for RRUI would draw interest but would not be governed by the repayment requirements imposed on debtor states.

OMB Director David Stockman has criticized the labor-management proposal as a de facto transfer to the U.S. Treasury of the RRUI indebtedness. The Administration has therefore proposed a transfer of the debt to the Unemployment Trust Fund as an interim arrangement followed by merger of RRUI into the UC system.

I urge you to separate the retirement and unemployment insurance issues. Any changes in the RRUI program should be considered only after the business community and state officials have had adequate opportunity to assess the effect on the Unemployment Trust Fund.

Should you move to authorize advances from the Unemployment Trust Fund to the RRUI program, we urge you to do so either through creation of a new account for loans to RRUI, with no Federal Unemployment Tax Act (FUTA) contributions, or by making such advances subject to safeguards comparable to those governing repayment of advances to states.

Without these protections, the RRUI debt will be unfairly shifted to the business community at large. The UC loan account is financed from a portion of employer FUTA contributions, but the railroad industry is exempt from FUTA. We recognize that FUTA contributions to the loan account have been supplemented by general revenue advances, but these advances will be repaid as the state loans are repaid pursuant to the strict repayment requirements.

A merger of the RRUI program into the UC system involves too many complications to be done within the time frame for action on the retirement program. In any event, it should not be done at all unless there is assurance that the costs of RRUI are not shifted to the business community at large. Moreover, requiring the already insolvent UC system to absorb the bankrupt RRUI program could compound the problems of each. Members of the broad business community—and state officials, who administer the UC system and are responsible for determining UC benefits and taxes—need more opportunity to appraise the impact of such a merger.

Should you desire further information, please have your staff contact Eric J. Oxfeld, our issue manager for unemployment compensation, at 463-5514.

Your consideration of our recommendations is respectfully requested, and I ask that this letter be entered in the hearings record.

Cordially,

HILTON DAVIS.

COUNCIL OF STATE CHAMBERS OF COMMERCE,
Washington, D.C., May 3, 1983.

Hon. HAROLD FORD,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, Washington, D.C.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security,
Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: The Council of State Chambers' Employee Benefit Committee has asked me to express its concern that there be appropriate protections to the Unemployment Trust Fund if Congress authorizes the railroad unemployment insurance (RRUI) program to borrow from it. Also action on the proposal to merge the federal railroad unemployment insurance (RRIU) program into the federal-state unemployment compensation (US) system should be delayed until there has been adequate opportunity for a thorough analysis of its impact.

The rail unemployment and retirement systems are in financial trouble. Rail labor and management have reached an agreed solution for the retirement program, introduced as H.R. 164/S. 1074. That measure does not address the imbalance of RRUI benefits and taxes, but would (1) transfer the RRUI debt to the UC loan account in the Unemployment Trust Fund, and (2) authorize the RRUI program to borrow from the UC loan account on the same basis as a state. Advances for RRUI would draw interest but would not be governed by the repayment requirements imposed on debtor states.

OMB Director David Stockman has criticized the labor-management proposal as a de facto transfer to the U.S. Treasury of the RRUI indebtedness. The administration has therefore proposed a transfer of the debt to the Unemployment Trust Fund as an interim arrangement followed by merger of RRUI into the UC system.

Any changes in the RRUI program should be considered only after the business community and State officials have had adequate opportunity to evaluate the effect on the Unemployment Trust Fund.

If you authorize advances from the Unemployment Trust Fund to the RRUI program, we suggest you to do so either through creation of a new account for loans to RRUI, with no Federal Unemployment Tax Act (FUTA) contributions, or by making such advances subject to safeguards comparable to those governing repayment of advances to States.

Without these protections, the RRUI debt will be unfairly shifted to the business community at large. The UC loan account is financed from a portion of employer FUTA contributions, but the railroad industry is exempt from FUTA. We recognize that FUTA contributions to the loan account have been supplemented by general revenue advances, but these advances will be repaid as the State loans are repaid pursuant to the strict repayment requirements.

A merger of the RRUI program into the UC system involves too many complications to be done within the time frame for action on the retirement program. In any event, it should not be done at all unless there is assurance that the costs of RRUI are not shifted to the business community at large. Moreover, requiring the already insolvent UC system to absorb the bankrupt RRUI program could compound the problems of each. Members of the business community and State officials, who administer the UC system and are responsible for determining UC benefits and taxes need more opportunity to evaluate the impact of such a merger.

Your consideration of our recommendations is respectfully requested, and I ask this letter be entered in the hearings record.

Sincerely yours,

WILLIAM R. BROWN, *President.*

STATEMENT OF PATRICK MENDILLO, NATIONAL PRESIDENT, NATIONAL ASSOCIATION OF RETIRED AND VETERAN RAILWAY EMPLOYEES, INC.

My name is Patrick Mendillo, I am the National President, of the National Association of Retired and Veteran Railway Employees, Inc. My office and my home are in New York City. I most appreciate the opportunity to say just a few words on behalf of many thousands of retired railroad workers who are members of 145 units of NARVRE throughout the United States.

NARVRE is a membership organization representing the interest of current and former railroad workers. We have been such an organization for 45 years, thus giving us a long, involved history in all matters pertaining to the industry. As a membership body we hold conventions and elect officers from among our members, a fact giving us grassroots basis for this testimony. Our officers are elected at a convention held every two years; I have been President since 1982. Since time is short and issues very complicated I would like to have this testimony included in the record.

I would like to comment on certain aspects of S-1074 and H.R. 1646, both addressing railroad retirement problems.

NARVRE recognizes the poor finanical straits of the railroad retirement account, largely owing the current national recession, and need to make appropriate adjustments. Basically we the current versions require retirees to pay an out of proportion share of the total cost. The combination of COLA delays, COLA offsets and benefit taxation means that workers who paid into the system for many years and expected certain benefit levels will not get them.

In analyzing S-1074 and H.R. 1646 we find certain components that, if incorporated into a new package, would better serve the interests of retirees. Permitting the system to borrow against the amounts owed by social security system, for example, would provide an infusion of funds at a time when they are needed. We also think that repayment of the money owed the Retirement Fund by the Unemployment Fund would add to the system's soundness. A very critical issue here is an amount of $1.8 billion that H.R. 1646 calls for as a shortfall for past dual benefit appropriations. Many of us who observed congress rearrange the system in 1974 recall that the government obligated itself to the total amount necessary to phase out dual benefits. Many of us were working at the time and agreed to phase out dual benefits if the government would pay their share of the cost. We had no idea the money would be paid from the Retirement Fund if the government went back on its word. We were the people who, last year, felt the sting of reduced benefit checks as a direct result of the government's default. Consequently that amount of money should be included in any agreement. Our understanding is that the federal share as outlined above, together with certain other recommendations, were enacted perhaps some benefit reductions could be avoided.

We know that decisions of the type which resulted in the agreement between the representatives of labor and management and are embodied in the bills S-1074 and H.R. 1646 are most difficult and painful to make. No one wants reduced benefits of any kind or increased taxes of any kind, but sometimes it can't be helped. We believe that the arrangement reflected in these bills is fair to the retirees, and fair to the Government. As President of NARVRE I wish to express support for the enactment of H.R. 1646.

Thank you for this opportunity to express these views on a subject which is vitally critical to the welfare of our members, the railroad retirees.

REGIONAL TRANSPORTATION AUTHORITY,
Chicago, Ill., May 3, 1983.

Hon. DAN ROSTENKOWSKI,
Chairman, Ways and Means Committee, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN ROSTENKOWSKI: I am writing to express my concern regarding certain provisions in the Railroad Retirement Act/Railroad Retirement Tax Act Amendments, H.R. 1646, currently pending before your committee.

It is my understanding that H.R. 1646 will establish a preferential Tier II tax rate for certain commuter rail authorities—those that have recently taken over from CONRAIL. In fiscal year 1983, the affected commuter authorities will be paying only slightly more than one-half the amount of Tier II tax per employee than will be required of other railroad employers, including commuter rail authorities outside the Northeast corridor. Furthermore, because presumably the employees of the Northeast commuter authorities will be entitled to retirement benefits equivalent to those received by all other rail retirees, the burden of financing these underfunded benefits will fall upon either the federal government or upon the other commuter railroads, freight railroads and their employees.

The need for some type of relief is not limited to the Northeast corridor carriers that benefit from H.R. 1646. The Regional Transportation Authority recently took over two bankrupt commuter rail lines, the Rock Island Railroad and the Milwaukee Road. Without RTA's action, the service along those routes would most likely have had to be abandoned. Those lines are in dire financial straits, at least as much in need as are any of the east coast communter systems. They are essential to smooth commuter flows in the areas they serve, and hence their continued existence serves the national interest; and they are now struggling to come back from near financial ruin.

If Congress does choose to assist struggling commuter rail authorities through the mechanism of preferential tax treatment as embodied in H.R. 1646, ideally the relief should be granted to all commuter rail authorities. At the very least, if special tax rates are granted, their beneficiaries should include rail lines outside the Northeast corridor which are in a very serious financial position, such as Illinois' Milwaukee Road and Rock Island commuter lines.

I appreciate your consideration of RTA's concern in this matter.

Sincerely,

LEWIS W. HILL, *Chairman.*

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